Supreme Court, U. S.
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APPENDIX

In the

Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-225

BRUCE BABBITT, GOVERNOR OF THE STATES OF ARIZONA, ET AL.,
Defendant Appellants,
AND
ARIZONA FARM BUREAU FEDERATION,
AN ARIZONA CORPORATION, ET AL.,
Intervenor Appellants,

versus

UNITED FARM WORKERS NATIONAL UNION
ON BEHALF OF ITSELF AND ITS MEMBERS, ET AL.,
Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA

Filed ~~June 18, 1979~~ AUG 8 1978
Jurisdiction Postponed October 10, 1978

IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

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BRUCE BABBITT, GOVERNOR OF THE STATE OF ARIZONA, ET AL.,
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CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

Docket Number	Date	Proceedings
1	August 14, 1972	File Complaint and attachments thereto.
4	August 27, 1973	File Plaintiffs' Motion for Preliminary Injunction and Application for a Three-Judge Court. Amended Complaint for Injunctive and Declaratory Relief, and Application for Three-Judge Court, Affidavits and Memorandum.
8	October 1, 1973	File Intervenor-Applicants' Motion and Application to Intervene as Defendants, Memorandum and Notice of Hearing on November 5, 1973, at 10:00 A.M.
-	October 1, 1973	Lodge Answer of Intervenor-Applicants and Response to Application for Three-Judge Court.
-	October 1, 1973	Lodge Intervenor-Applicants' Response for Preliminary Injunction and Application for Three-Judge Court.
9	October 1, 1973	File Defendants' Motion to Dismiss and Response to Plaintiffs' Motion for Preliminary Injunction and Memorandum
10	October 10, 1973	File Defendants' Supplemental Memorandum in support of Motion to Dismiss and Notice of Hearing (9) on November 19, 1973, at 10:00 A.M.
14	October 19, 1973	File Plaintiffs' Memorandum in Opposition to Motion and Application for Intervention.
15	October 23, 1973	File Plaintiffs' Opposition to Defendants' Motion to Dismiss.

Docket Number	Date	Proceedings
16	October 30, 1973	File Intervenor-Applicants' Reply to Plaintiffs' Response to Motion and Application for Intervention.
		Minute Entry: Intervenor-Applicants' Motion and Application to Intervene as Defendants. Bruce Meyerson and James Rutkowski present for Plaintiff. Robert E. Dickelman present for Defendant. Jon Kyl present for Intervenor-Applicants. Order that Intervenor-Applicants' Motion and Application to Intervene as Defendants granted.
18	November 6, 1973	Enter and file Order for Intervention.
19	November 6, 1973	File Answer of Intervenor-Applicants and Response to Application for Three-Judge Court.
20	November 6, 1973	File Intervenor-Applicants' Response to Motion for Preliminary Injunction and Application for Three-Judge Court.
21	November 15, 1973	File Intervenor's Motion to Dismiss, Brief, exhibit and Notice of Hearing on December 10, 1973, at 10:00 A.M.
23	November 28, 1973	File Opposition to Intervenors' Motion to Dismiss and exhibits.
24	December 5, 1973	File Intervenors' Reply to Response to Motion to Dismiss.
26	December 11, 1973	File Affidavit of Charles E. Jones and exhibits thereto.
27	December 11, 1973	File Defendants' Motion to Abstain and Memorandum in Support of Intervenors' Motion to Dismiss.
28	December 14, 1973	File Affidavit of Bruce Meyerson.

Docket Number	Date	Proceedings
	December 14, 1973	Minute Entry: Hearing had on Defendants' Motion to Dismiss and Intervenors' Motion to Dismiss. James Rutkowski and Bruce Meyerson present for Plaintiff, James B. Feeley and Michael Flam present for Attorney General's office, Robert E. Dickelman present for Agriculture Employee's Relation Board and Jon Kyl and Charles E. Jones present for Intervenors. Matter held in abeyance.
29	January 24, 1974	File Defendants' Supplemental Submission to Defendants' Motion to Abstain and Memorandum in Support of Intervenors' Motion to Dismiss and exhibit.
30	February 4, 1974	File Plaintiff's Response to Defendants' Supplemental Submission.
31	February 11, 1974	File letter from James Rutkowski to Judge Muecke and copy of hearing officer's recommendation on Motion to Dismiss.
32	March 1, 1974	File Intervenors' Response to Defendants' Supplemental Submission and Plaintiffs' Response Thereto.
33	March 7, 1974	File Plaintiffs' Motion for Informal Conference and Affidavit.
34	March 11, 1974	File Defendants' Opposition to Plaintiffs' Motion for Informal Conference.
35	March 12, 1974	File Intervenors' Response to Plaintiffs' Motion for Informal Conference.
36	March 20, 1974	File Defendants' Response to Plaintiffs' Motion for Informal Conference.

Docket Number	Date	Proceedings
37	October 2, 1974	Enter and file order that Plaintiffs' Motion for Informal Conference is granted and will be held in chambers on October 7, 1974, at 1:30 p.m.
38	October 7, 1974	File supplemental citation re Motions to Dismiss.
	October 7, 1974	Minute Entry: Informal conference. James Rutkowski and Bruce Meyerson present for Plaintiff, James Feeley present for Defendant State of Arizona, Robert Dickleman present for Defendant. Preliminary Pretrial Conference held.
39	October 24, 1974	Enter and file order that the Defendants' Motions to Dismiss denied and Plaintiffs' Motion for Preliminary Injunction denied; that a three-judge court be impaneled pursuant to Title 28 U.S.C. 2281 and 2284; that the parties shall hereafter file an original and four copies of all their pleadings with the Clerk of the Court; that the parties will be notified when and where the three-judge Court will be convened to conduct further hearings in this matter.
40	October 24, 1974	File Notification and Certificate of Judge Chambers re formation of district court of three judges.
41	October 31, 1974	Enter and file Order of Honorable Richard H. Chambers designating and appointing Honorable Ozell M. Trask, Honorable Walter E. Craig, and Honorable C. A. Muecke to hear and determine this cause, and all motions and proceedings therein.

Docket Number	Date	Proceedings
42	November 4, 1974	File Answer of Gene Blake, William S. Boice, John L. Consaul, Jack Montgomery, Jack McManus, Milton G. Sanders, Jesse A. Udall and Jack D. Williams.
43	November 4, 1974	File Defendants' Notice of Reservation of right to renew Motion to Dismiss.
44	November 4, 1974	File Answer.
45	November 13, 1974	Enter and file order of Honorable Richard H. Chambers (amended) appointing and designating Honorable John F. Kilkenny, Honorable Walter E. Craig, and Honorable C. A. Muecke to hear and determine this case, and all motions and proceedings therein.
47	November 27, 1974	Intervenors' Motion to Dismiss, or in the Alternative to Abstain.
48	November 27, 1974	Intervenors' Memorandum in Support of Motion to Dismiss or Abstain and attachment.
49	November 27, 1974	Intervenors' Motion for Preliminary Hearing of Motion to Dismiss or Abstain.
51	December 13, 1974	Memorandum Joining in Support of Motion to Dismiss or Abstain.
52	December 13, 1974	Defendants' Submission in Support of Intervenors' Motion to Dismiss or Abstain.
53	January 2, 1975	Plaintiffs' Opposition to Intervenors-Defendants Motion to Dismiss.
56	January 7, 1975	Response to Plaintiffs' Opposition to Intervenors'-Defendants' Motion to Dismiss.

Docket Number	Date	Proceedings
57	January 8, 1975	Intervenors' Reply to Opposition to Dismiss.
	January 13, 1975	Minute Entry: Hearing on Intervenors' Motion to Dismiss or, in the Alternative, to Abstain and oral argument on merits. J. Rutkowski present for Plaintiff; J. B. Feeley and M. S. Flam present for Defendants, Jon Kyl, C. E. Jones and J. Weldon present for Intervenors, R. E. Dickelman present for Agricultural Employee's Relations Board. By Stipulation Order named Defendants may be changed from Jack Williams to Raul Castro, Governor, Gary Nelson to Bruce Babbitt, Attorney General, Ernest Garfield to Bart Fleming, Treasurer of the State of Arizona and Jesse A. Udall to Ernest N. Holgate. Order all further pleadings be filed with last supplemental brief; that matter taken under advisement.
58	January 13, 1975	Plaintiffs' Supplemental Memorandum in Opposition to Motion to Dismiss.

Docket Number	Date	Proceedings
59	January 16, 1975	Order ruling on Defendants' Motion to Dismiss is reserved; final hearing to dispose of the case will be set following additional preparation by parties for such hearing; that pretrial conference being held on January 15, 1975, with following counsel present: James Rutkowski for Plaintiffs, Michael Flam for Defendant Office of the Attorney General, Robert Dickelman for Defendant Agricultural Employment Relations Board, and Jon Kyl and Charles Jones for Intervenors Arizona Farm Bureau Federation; that the parties agreed at that pretrial conference that a final hearing with the three-judge panel presiding could dispose of this case by way of ruling on Defendants' Motion to Dismiss or Cross-Motions for Summary Judgment, or a trial to the three-judge panel; that on March 17, 1975, at 2:00 P.M. the parties will hold pretrial conference with Judge Muecke.
60	February 3, 1975	Plaintiffs' Formulation of Factual Issues.
61	February 27, 1975	Defendants' and Intervenors' written Interrogatories to Plaintiffs.
62	March 7, 1975	Notice, Stipulation and Order Michael W. L. McCrory is associated as counsel for Plaintiffs.
63	March 10, 1975	Stipulation re harvest seasons, etc.
64	March 14, 1975	Answers to Defendants' and Intervenors' written Interrogatories.
	March 17, 1975	Minute Entry: Pretrial conference held.

Docket Number	Date	Proceedings
65	March 17, 1975	Defendants' and Intervenors' Formulation of Factual Issues, filed March 14, 1975.
66	March 18, 1975	Order that this case having come on for Preliminary Pretrial Conference on March 17, 1975, with following attorneys present: James Rutkowski and Michael McCrory for Plaintiffs; Robert Dickelman and William Gibney for Defendant; and Jon Kyl and Charles Jones for the Intervenors; that both sides are to file with the Court a schedule of discovery they will take including witnesses not later than April 21, 1975; that said schedule shall also include a date by which parties will submit a proposed pretrial order all in full compliance with Local Rule 42; that the Plaintiffs shall file any motions to certify this matter as a class action not later than April 21, 1975.
68	April 18, 1975	Plaintiffs' Request for Preliminary Pretrial Conference.
69	April 18, 1975	Plaintiffs' Proposed Discovery and Pretrial Schedule.
	April 18, 1975	Lodge Plaintiffs' Proposed Pretrial Order.
70	April 18, 1975	Intervenors' and Defendants' Schedule of Discovery.
71	April 21, 1975	Plaintiffs' Ruben Alaniz and Matilda Varela Motion to Designate and Maintain Class Action and Memorandum.
	May 1, 1975	Minute Entry: Pretrial Conference held this date.

Docket Number	Date	Proceedings
73	May 1, 1975	Motion of William Gibney for Substitution of Counsel for the Agricultural Employment Relations Board.
76	May 5, 1975	Order that William Gibney, General Counsel to the Agricultural Employment Relations Board be substituted as the attorney of record on behalf of Agricultural Employment Relations Board and on behalf of its members, individually, filed May 1, 1975.
77	May 9, 1975	Response of Defendants and Intervenors to Plaintiffs' Motion for Class Action Designation and exhibits.
78	May 14, 1975	Plaintiffs' Request for Admissions.
79	May 14, 1975	Plaintiffs' Written Interrogatories to Defendants and Intervenors.
80	May 19, 1975	Plaintiffs' Reply in Support of Motion for Class Action Designation.
81	May 27, 1975	Notice of Oral Deposition of Fidelis Kuban.
82	May 27, 1975	Notice of Oral Deposition of Guadalupe Sanchez.
83	May 27, 1975	Defendants'-Intervenors' Supplemental Response and Affidavits.
84	June 2, 1975	Notice of Oral Deposition to Marshall Berry.
85	June 5, 1975	Letter from James Rutkowski, Esquire, to counsel.
86	June 5, 1975	Plaintiffs' Supplemental Answers to Interrogatories.
87	June 9, 1975	Plaintiffs' Request to Produce.
88	June 12, 1975	Notice of Oral Deposition of Gustavo Gutierrez.
89	June 12, 1975	Notice of Oral Deposition to Cesar Chavez.

Docket Number	Date	Proceedings
91	June 19, 1975	Plaintiffs' Motion for Protective Order and to Quash or Modify Subpoena Duces Tecum, Memo and Attachment.
93	June 20, 1975	Defendants' and Intervenors' Answers to Plaintiffs' Written Interrogatories.
94	June 20, 1975	Defendants' and Intervenors' Answers to Plaintiffs' Revised Requests for Admission.
95	June 30, 1975	Plaintiffs' Second Set of Supplemental Answers to Interrogatories.
96	June 30, 1975	Intervenors' Supplemental Answers to Interrogatories.
97	July 1, 1975	Intervenors' Response to Motion for Protective Order and to Quash or Modify Subpoena Duces Tecum.
98	July 3, 1975	Order that plaintiffs' motion for protective order and to quash or modify subpoena duces tecum scheduled for July 7, 1975, is continued for hearing on July 14, 1975 at 10:00 A.M.
98	July 8, 1975	Deposition of Lupe Sanchez.
99	July 9, 1975	Statement of Counsel in Support of Motion for Protective Order & Affidavit.
	July 14, 1975	Minute Entry: Plaintiffs' motion for protective order and to quash or modify subpoena duces tecum on for hearing. Michael W.L. McCrory and James Rutkowski present for Plaintiffs; Charles E. Jones, Harold Merkow and Wm. Gibney present for Defendants. Order that motion Granted.

Docket Number	Date	Proceedings
100	July 15, 1975	Deposition of Father Fidelis Kuban.
101	July 16, 1975	Plaintiffs' Notice of Oral Deposition of James W. Cherry, et al.
102	July 22, 1975	Deposition of D. Marshall Barry, Ph.D.
103	July 29, 1975	Deposition of James W. Cherry.
104	August 19, 1975	Deposition of Paul Hunter.
105	August 19, 1975	Deposition of Rose Lopez.
	August 27, 1975	Lodge Preliminary Pretrial Order.
106	September 2, 1975	Deposition of H.S. Raymond.
107	September 2, 1975	Deposition of LeRoy Bridges.
108	September 3, 1975	Notice of Oral Deposition of John Foley and William Foster.
109	September 8, 1975	Deposition of Ralph Bodine.
110	September 9, 1975	Intervenors' Notice of Oral Deposition of Cesar Chavez.
113	October 29, 1975	Deposition of George W. Campbell, Jr. and Plaintiff's Exhibits 1, 2, 3, 4A, 4B, 5, 6, 4C, 10 and Defendant's 1.
115	November 12, 1975	Deposition of Stanley Lubin (Vol. 1).
115a	November 12, 1975	Deposition of Stanley Lubin (Vol. 11).
120	November 28, 1975	Defendants' and Intervenors' Motion to Renew Motion to Dismiss or for Summary Judgment.
121	November 28, 1975	Defendants' and Intervenors' Brief.
122	December 1, 1975	Plaintiffs' Trial Memorandum in Support of Request for Declaratory and Injunctive Relief.
123	December 1, 1975	Defendants' and Intervenors' Request for Hearing on their Motion to Renew Motion to Dismiss or For Summary Judgment before a Three-Judge Panel to be set by the Court.

Docket Number	Date	Proceedings
124	December 1, 1975	Notice of Hearing on Defendants' and Intervenors' Motion to Dismiss or For Sanctions on December 22, 1975, at 10:00 A.M. before the Honorable C.A. Muecke.
125	December 1, 1975	Defendants' and Intervenors' Motion to Dismiss or for Sanctions.
126	December 3, 1975	Opposition to Defendants' and Intervenors' Motion to Dismiss or for Sanctions and Plaintiffs' Cross-Motion to Strike Pleading and for Sanctions & Request for a Conference.
127	December 8, 1975	Defendants' and Intervenors' Reply to Opposition to Motion to Dismiss or for Sanctions.
128	December 8, 1975	Notice of Hearing of Plaintiffs' Cross-Motion to Strike Pleadings and for Sanctions on December 22, 1975, at 10:00 A.M.
129	December 23, 1975	Plaintiffs' Response to Defendants' and Intervenors' Trial Memo and Opposition to Defendants' and Intervenors' Motion to Dismiss.
130	December 24, 1975	Intervenors' Response to Plaintiffs' Trial Memo in Support of Request for Declaratory and Injunctive Relief.
131	January 7, 1976	Plaintiffs' Request to File Reply Memo.
132	January 16, 1976	Stipulation and Order that parties have to January 23, 1976, to submit the pretrial order and their respective reply briefs.

Docket Number	Date	Proceedings
	January 20, 1976	Minute Entry: PRETRIAL CONFERENCE held. Attorneys present: Michael McCrory, James Rutkowski, Jon Kyl, Wm. Gibney, and Charles E. Jones and Larry F. Smith.
133	January 26, 1976	Defendants'-Intervenors' Reply to Plaintiffs' Opposition to Defendants'-Intervenors' Motion to Renew Motion to Dismiss.
	January 26, 1976	Lodge Pretrial Order.
134	January 26, 1976	Intervenors' Reply to Plaintiffs' Response to Defendants'-Intervenors' Pretrial Memo.
135	January 26, 1976	Plaintiffs' Reply to Defendants'-Intervenors' Response to Plaintiffs' Trial Memo in Support of Request for Declaratory and Injunctive Relief and exhibit.
136	January 28, 1976	Deposition of Cesar Chavez.
137	February 20, 1976	Plaintiffs' Request for Informal Conference.
138	February 27, 1976	Defendants' and Intervenors' Motion in Limine and Appendix.
139	March 15, 1976	Plaintiffs' Opposition to Defendants' and Intervenors' Motion in Limine.
140	April 8, 1976	Intervenors' Reply to Plaintiffs' Opposition to Defendants' and Intervenors' Motion in Limine.
141	May 11, 1976	Letter from Jennings, Strouss & Salmon to Judge Muecke re Trial time.

Docket Number	Date	Proceedings
142	May 24, 1976	Order that this Court having received and considered the letters from plaintiffs and defendants both dated May 10, 1976, finds that the June 22, 1976, thru June 25, 1976 date previously set for the hearing of motions and for the trial of this case is hereby vacated and is rescheduled for January 18, 1977; that the parties shall contact this Court for a date mutually convenient to the parties and the Court for a pretrial conference so that an attempt can be made to simplify the issues and otherwise facilitate the disposition of this case as provided by Rule 16 of the Federal Rules of Civil Procedure.
143	August 23, 1976	Intervenors' Request for Oral Argument and Memo.
144	September 9, 1976	Plaintiffs' Opposition to Request for Oral Argument.
145	September 10, 1976	Defendants' Response to Intervenors' Motion for Oral Argument.
146	September 10, 1976	Intervenors' Reply to Opposition to Request for Oral Argument.
-	November 8, 1976	Minute Entry: Order that this cause is set for Preliminary Pretrial Conference on November 29, 1976, at 3:30 P.M.
-	November 29, 1976	Minute Entry: PRETRIAL CONFERENCE held.
147	December 1, 1976	Order that the Motion in Limine is Granted; that the parties shall meet and have a Pretrial Conference on December 28, 1976, at 9:00 A.M.

Docket Number	Date	Proceedings
148	December 3, 1976	Intervenors' Memorandum as to Alternative Recognition Procedures under the Act.
149	December 9, 1976	Plaintiffs' Motion to Reconsider and Memorandum.
150	December 9, 1976	Plaintiffs' Memorandum on the Absence of Alternative Recognition Procedures under the Arizona Agricultural Employment Relations Act.
151	December 27, 1976	Intervenors' Response to Plaintiffs' Motion to Reconsider
152	December 27, 1976	Intervenors' Written Interrogatories to Plaintiffs.
153	January 12, 1977	Plaintiffs' Offer of Proof and attachments.
154	January 12, 1977	Plaintiffs' Cases Excluding packing Shed Employees, Stitchers and Haulers from NLRA Coverage.
155	January 13, 1977	Defendants' and Intervenors' Motion in Limine.
-	January 13, 1977	Lodge Pretrial Order.
156	January 14, 1977	Answers to Intervenors' Written Interrogatories to Plaintiffs.
157	January 14, 1977	Intervenors' Memorandum setting forth cases indicating NLRA coverage of packing shed employees, stitchers and haulers.
158	January 18, 1977	Stipulation Re. Harvest and Pre-Harvest Seasons and Attachments.
159	January 18, 1977	Plaintiffs' Opposition to Defendants' and Intervenors' Motion in Limine, Filed January 17, 1977.

Docket Number	Date	Proceedings
-	January 18, 1977	Minute Entry: NON-JURY TRIAL and Hearing on all pending motions. Michael W.L. McCrory and James Rutkowski, present for plaintiff; Charles E. Jones, Jon Kyle, present for Intervenors; Alan S. Kainan, present for State of Arizona; Steve Shadle, present for Yuma Citrus Shippers Association; William Gibney, present for Agricultural Employment Relations Board, Terry Bond, Director of Agricultural Employment Relations Board, Cesar Estrada Chaves sworn and examined. Plaintiffs' Exhibits 1 and 2 admitted. At 4:30 P.M. order Court recessed until January 19, 1977, at 9:00 A.M.
-	January 19, 1977	Minute Entry: Enter further proceedings of Non-Jury Trial. All parties and counsel present. Cesar Estrada Chavez further examined. Defendants' Exhibit A admitted. At 4:30 P.M. order Court recessed until January 20, 1977, at 9:00 A.M.
-	January 20, 1977	Minute Entry: Enter further proceedings of Non-Jury Trial. All parties present and counsel present. Defendants' Exhibits B admitted. At 4:30 P.M order Court recessed until January 21, 1977, at 9:30 A.M.

Docket Number	Date	Proceedings
-	January 21, 1977	Minute Entry: Enter further proceedings of Non-Jury Trial. All Counsel present. Plaintiffs' Exhibit No. 3 admitted. Both sides rest. The Court will hear no closing oral argument. Parties to file simultaneous briefs within 30 days after the receipt of the reporter's transcript (6 to 8 weeks from now reporter states) with replies to each of the briefs and other papers to be filed simultaneously within 15 days thereafter. At 2:30 P.M. order Court recessed.
160	January 21, 1977	Pretrial Order.
161	March 3, 1977	Transcript of Non-Jury Trial and Hearing on all Pending Motions, Volume I.
162	March 3, 1977	Transcript of Non-Jury Trial and Hearing on all Pending Motions, Vol. II
-	May 2, 1977	Lodge Plaintiffs' Proposed Findings of Fact, Conclusions of Law and Memorandum.
-	May 2, 1977	Lodge Intervenors' Proposed Findings of Fact and Conclusions of Law.
163	May 2, 1977	Defendants-Intervenors' Memorandum on the Existence of a Substantial Constitutional Question.
164	May 23, 1977	Defendants' and Intervenors' Response to Plaintiffs' Memorandum of the Existence of a Substantial Constitutional Question.
165	May 23, 1977	Defendants' and Intervenors' Response to Plaintiffs' Proposed Findings of Fact and Conclusions of Law.

Docket Number	Date	Proceedings
166	May 24, 1977	Plaintiffs' Response to Defendants' and Intervenors' Memorandum on the Existence of a Substantial Federal Question and Proposed Findings of Fact and Conclusions of Law.
167	November 11, 1977	Order that the parties submit proposed Findings of Fact and Conclusions of Law to the Court and to each other not later than December 15, 1977; that the Court takes official judicial notice pursuant to Rule 25, FRCP, that Defendant Raul Castro has been supplanted as Governor of the State of Arizona by the Hon. Wesley Bolin who is therefore substituted as the Defendant in stead and place of Defendant Castro.
168	April 20, 1978	Opinion and Order that a permanent injunction shall issue enjoining Defendants from applying or enforcing any of the provisions of ARS 23-1381, et seq.
169	April 20, 1978	JUDGMENT in favor of Plaintiffs herein in accordance with the opinion of the Court and a permanent injunction is hereby entered preventing enforcement by Defendants herein of A.R.S. 23-1381, et seq.
-	April 20, 1978	Copy of Opinion and Order and Judgment to Judge Kilkenny, Judge Craig, Michael W.L. McCrory, James Rutkowski, The Attorney General, Jennings, et al. and William A. Gibney.
170	May 1, 1978	Plaintiffs' Motion for Attorney's Fees and Memorandum; Notice of Hearing on May 22, 1978 at 10:00 AM.

Docket Number	Date	Proceedings
171	May 1, 1978	Plaintiffs' Bill of Costs in sum of $8,853.10.
172	May 12, 1978	Plaintiffs' Errata - re. omission of pages 7 and 8 to Plaintiffs' Motion for Attorney's Fees and Memorandum filed May 1, 1978.
173	May 16, 1978	Affidavit of Michael W.L. McCrory for Motion for Attorney's Fees.
176	May 26, 1978	Defendants' and Intervenors' Objections to Plaintiffs' Bill of Costs.
177	May 26, 1978	Intervenors' Response to Plaintiffs' Motion for Attorneys' Fees.
178	May 27, 1978	Defendants' and Intervenors' Reply to Plaintiffs' Motion for Attorneys' Fees.
180	June 5, 1978	Notice of Association of Counsel (Ely & Bettini) for Plaintiffs for purpose of arguing matter of attorneys' fees.
182	June 13, 1978	Defendants' Motion for Stay of Judgment Granting Injunction and Memorandum and Notice of Hearing on June 26, 1978, at 10:00 A.M.
183	June 13, 1978	Notice of Appeal to the Supreme Court Clerk and Court Reporter.
184	June 14, 1978	Plaintiffs' Response to Defendants' and Intervenors' Objection to Plaintiffs' Bill of Costs.
185	June 14, 1978	Plaintiffs' Reply to Defendants' and Intervenors' Response to Plaintiffs' Motion for Attorneys' Fees.
187	June 21, 1978	Intervenors' Supplemental Response to Plaintiffs' Reply Memorandum.

Docket Number	Date	Proceedings
-	June 27, 1978	Minute Entry: Plaintiffs' Motion for Attorneys' Fees on for hearing. (List of Counsel present attached to Minutes.) Motion argued by Herb Ely for Plaintiffs, Richard Turner for State of Arizona; and C.E. Jones for Intervenors. James Rutkowski sworn and examined. Plaintiffs' Exhibit 1 marked and admitted in evidence. The Court directs counsel for Intervenors-Defendants to submit additional briefs within 5 days, plaintiffs to respond within five days and Intervenors-Defendants to reply within 5 days. The Court requests that Mr. Ely set a time and date for additional testimony of Michael McCrory on attorneys' fees. The Motion is taken under advisement.
189	June 27, 1978	Clerk's Taxation of Costs for Plaintiffs in amount of $3,207.10.
-	June 27, 1978	Enter costs in J.D.
190	July 3, 1978	Intervenors' Supplemental Memorandum of Law Relative to Attorneys' Fees.
191	July 3, 1978	Plaintiffs' Opposition to Motion for Stay of Judgment.
192	July 5, 1978	Plaintiffs' Motion to Review Taxation of Costs, Memorandum and Notice of Hearing on July 7, 1978, at 1:30 P.M.
195	July 6, 1978	Defendants' and Intervenors' Reply to Response to Motion for Stay of Judgment.

Docket Number	Date	Proceedings
-	July 7, 1978	Plaintiffs' Motion for Attorneys' Fees (170); and Plaintiffs' Motion to review taxation (Minute Entry) of costs (192) on for hearing. James Rutkowski sworn and examined; Michael McCrory sworn and examined. Plaintiffs' Exhibits 2, 3, 9, 10, 11, 12 and 13 admitted. Defendant and Intervenor's motion for stay also heard. All motions are taken under advisement. Attorneys present were: Michael McCrory, Herbert Ely and James Rutkowski present for Plaintiffs, Jon Kyl and William A. Gibney, present for Intervenors and Richard K. Turneck present for State Defendants.
196	July 13, 1978	Plaintiffs' Reply to Intervenors' Supplemental Memorandum re. Attorneys' Fees.
-	July 17, 1978	Intervenors' Reply Relative to Attorneys' Fees.
198	August 2, 1978	Order Defendants' and Intervenors' Motion for Stay of Judgment is Denied.
199	August 18, 1978	Plaintiffs' Exhibits 4, 5, 6, 7 and 8.
200	September 12, 1978	Opinion and Order that Plaintiffs' motion for attorneys' fees is granted and the amount of $44,970 is assessed against the Defendants and Intervenors for payment of said fees.
201	September 12, 1978	JUDGMENT Granting Plaintiffs' Motion for Attorneys' Fees against Defendants and Intervenors in amount of $44,970. with interest thereon until paid.
202	September 20, 1978	Defendants' Designation of Record.

Docket Number	Date	Proceedings
-	September 22, 1978	Record on appeal transmitted to Supreme Court.
203	October 11, 1978	Defendants' Notice of Appeal to the 9th Circuit Court of Appeals from Judgment entered September 12, 1978. Copy to Court Reporter and 9th Circuit Court of Appeals.
204	October 11, 1978	Defendants' Notice of Appeal to the Supreme Court of the United States ($5 fee paid).
-	October 12, 1978	Copy to Court Reporter and U.S. Supreme Court
-	October 12, 1978	$250 deposited in Registry Fund and $5 fee paid on appeal to 9th Circuit Court of Appeals.
205	October 18, 1978	Certified copy of Order from the Supreme Court of the United States that further consideration of the question of jurisdiction is postponed to the hearing of the case on the merits.
206	October 20, 1978	Appellants' Designation of Contents of Appendix.

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA

UNITED FARM WORKERS NATIONAL UNION, on behalf of itself and its members, GUSTAVO GUTIERREZ, an agent of the UNITED FARM WORKERS NATIONAL UNION in the State of Arizona, RUBEN ALANIZ and MATILDA VARELA on behalf of themselves and all others similarly situated, and WENDY ROSE, an individual,

Plaintiffs,

VS.

JACK WILLIAMS, Governor of the State of Arizona, GARY NELSON, Attorney General of the State of Arizona, ERNEST GARFIELD, Treasurer of the State of Arizona, TED G. HAWKINS, Finance Commissioner of the State of Arizona, GENE BLAKE, WILLIAM S. BOICE, JOHN L. CONSAUL, JACK MONTGOMERY, JACK MCMANUS, MILTON G. SANDERS, JESSIE A. UDALL, and JACK D. WILLIAMS, Individually and as members of the Arizona Agricultural Labor Relations Board,

Defendants.

NO. CIV 72-445 PHX CAM

AMENDED COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF AND APPLICATION FOR A THREE JUDGE COURT

Filed August 27, 1973

Plaintiffs, for their cause of action, allege as follows:

JURISDICTION

1.

This is a civil action for injunctive and declaratory relief against certain officials of the State of Arizona who are charged with enforcement of the Arizona Agricultural Employment Relations Act, Arizona Revised Statutes, Title 23, Ch. 8, Art. 5, Sections 23-1381 to 23-1395 (a copy of this statute was attached to the original complaint and is incorporated by reference.) This Court has jurisdiction under 28 U.S.C. 1343 and 42 U.S.C. 1983, this being an action to redress the deprivation by the defendants, acting under color of state law, of plaintiffs' civil rights privileges and immunities secured by the Constitution and laws of the United States. Jurisdiction is also founded upon 28 U.S.C. 2201, as plaintiffs seek a declaratory judgment as to the constitutionality of the aforesaid Arizona Agricultural Employment Relations Act, (hereinafter referred to as the "Act").

2.

This is a proper case for determination by a three-judge court pursuant to 28 U.S.C. 2281 and 2284 because plaintiffs seek, *inter alia,* injunctive relief against the enforcement of the aforesaid Arizona Agricultural Employment Relations Act on the ground that it is unconstitutional, on its face, under the free speech and assembly provisions of the First Amendment to the United States Constitution, the due process and

equal protection clauses of the Fourteenth Amendment to the United States Constitution, the "supremacy" provisions of Article VI, Cl. 2 of the United States Constitution, the "commerce" provisions of Article I, Sec. 8, Cl. 3 of the United States Constitution, and Articles I, Section 10 of the United States Constitution.

3.

Plaintiff UNITED FARM WORKERS NATIONAL UNION (hereinafter referred to as plaintiff "Union") is an unincorporated association which represents farm workers in Arizona and elsewhere in collective bargaining and other related matters. These farm workers are actively engaged within Arizona in efforts to secure collective bargaining rights for their union and collective bargaining agreements with their employers. Pursuant to such efforts the plaintiff Union and its members have organized and participated in, and desire to continue to organize and participate in, strikes, boycotts, peaceful picketing, collective bargaining and other concerted activities in support of plaintiff Union and its efforts to negotiate collective bargaining agreements with agricultural employers in Arizona and elsewhere.

4.

Plaintiff GUSTAVO GUTIERREZ is a resident of the state of Arizona and an agent of plaintiff Union, who for several years has actively organized and participated in and desires to continue to organize and participate in strikes, boycotts, peaceful picketing, collective bargaining and other concerted activities in

support of plaintiff Union in its efforts to negotiate collective bargaining agreements on behalf of its members.

5.

Plaintiffs RUBEN ALANIZ and MATILDA VARELA are representatives of the class of plaintiff farm workers who are regularly engaged in the growing and harvesting of crops and the packing of agricultural crops where packing is accomplished in the fields. The members of this class of plaintiffs are regularly employed in agricultural operations located within the state of Arizona.

6.

Plaintiffs RUBEN ALANIZ and MATILDA VARELA bring this action individually and on behalf of all others similarly situated pursuant to the provisions of Rules 23 (a) and (b) (2) of the Federal Rules of Civil Procedure. The members of this class described in Paragraph 5 are so numerous as to make their joinder impracticable. There are substantial questions of law and fact common to the class, and plaintiffs will fairly and adequately represent and protect the interest of the class.

7.

Plaintiff WENDY ROSE is a resident of the state of Arizona, a consumer of Arizona agricultural products concerned with the quality and condition of such products and a supporter of the plaintiff Union and plaintiff farm workers in their efforts to negotiate and enter into collective bargaining agreements. In furtherance of her concern as a consumer and her efforts to demonstrate support for and to assist the aforesaid

plaintiffs, plaintiff WENDY ROSE has participated in and desires to continue to participate on boycott activities directed against the products of agricultural employers who refuse to bargain collectively with the plaintiff Union and workers.

8.

Defendant JACK WILLIAMS is the Governor of the State of Arizona and is responsible under Section 23-1386 of the Act, for the appointment of the Chairman, Members and General Counsel of the Agricultural Employment Relations Board (hereinafter referred to as the "Board"). Defendant GARY NELSON is the Attorney General of the State of Arizona, and is responsible under Arizona Revised Statutes Section 23-1392 for the prosecution of persons charged with the commission of acts defined as criminal misdemeanors by the Section. Defendants GENE BLAKE, WILLIAM BOICE, JOHN CONSAUL, JACK MONTGOMERY, JACK McMANUS, MILTON SANDERS, JESSE A. UDALL are the members of the Agricultural Employment Relations Board (Board) established by the Act and JACK DOE WILLIAMS is the executive secretary of that board, all of whom were appointed by defendant GOVERNOR JACK WILLIAMS. In this capacity they are empowered by the Act, *inter alia* to receive and investigate complaints of unfair labor practices, conduct hearings on the same and hold representation elections. Defendant ERNEST GARFIELD is the Treasurer of the State of Arizona who is ultimately responsible for the state funds appropriated under Section 23-1395 of the Act.

T. G. HAWKINS is the Assistant Director of Finance of the State of Arizona who is empowered to effect the immediate dispersal of those funds to the Board.

CAUSE OF ACTION

9.

On or about May 11, 1972, the aforesaid Arizona Employment Relations Act was passed and enacted by the legislature of the state of Arizona. On or about May 11, 1972, said statute was signed into law by defendant Jack Williams, Governor of the State of Arizona, and on August 13, 1972, said statute went into full force and effect.

10.

The Act as a whole, insofar as it attempts to regulate agricultural labor relations, is inconsistent with the expressed intent of Congress to assert exclusive jurisdiction over such subject matter by enactment of the National Labor Relations Act, as amended (29 U.S.C. 151, *et seq.*), and thus in violation of the "supremacy" provisions of Article VI, Cl. 2 of the United States Constitution.

11.

The Act as a whole imposes unreasonable burdens upon and discriminates against interstate commerce, and is thus in violation of the "commerce" provisions of Article I, Sec. 8, Cl. 3 of the United States Constitution.

12.

The Act as a whole violates the Equal Protection clause of the Fourteenth Amendment in that:

A. The classification established by the Act, both in its intent and effect, operates to single out the class of

plaintiff farm workers as the only group subject to the restrictive and burdensome provisions of the law and invidiously discriminates against this class which is overwhelmingly made up of persons who are of an extremely low income group.

B. The classification between the plaintiff agricultural employees who are covered by the Act and other employees whom the law does not cover is arbitrary and unreasonable. There exists no legitimate state interest and no compelling interest for including the plaintiffs within the coverage of this law while excluding other employees, many of whom are also employed in the agricultural industry, from coverage under the Act.

C. The provisions of this law unduly restrict the plaintiffs' rights to picket, strike, boycott and gain recognition as the lawful bargaining agent, thereby infringing on the plaintiffs' fundamental rights of association and communication guaranteed by the First and Fourteenth Amendments. The application of these restrictive provisions and regulations upon the First Amendment activities of the plaintiffs without also applying them to other employees similarly situated denies to members of the plaintiff class, a particular and limited group of field workers, the equal protection of the laws as guaranteed by the Fourteenth Amendment of the Constitution of the United State.

13.

The Act as a whole constitutes a Bill of Attainder and is thus a violation of Article I, Section 10 of the United States Constitution in that it: a) singles out the United Farm Workers National Union, its members,

agents and employees: b) burdens that organization, its associates and supporters by imposing erroneous and discriminatory legislative judgment and verdict; c) prescribes in specific terms the penalties to be inflicted upon that organization and its agents.

14.

Each and every of the following provisions of the Arizona Agricultural Employment Relations Act, *inter alia*, are unconstitutional on its face in the following respects:

A. Section 23-1385B(7) which provides that it shall be an unfair labor practice for a labor organization or its agents to "induce or encourage . . . any secondary employer or any executive or management employee of any secondary employer to make a management decision not to handle, transport, process, pack, sell or distribute any agricultural commodity of an agricultural employer with whom a labor dispute exists" is unconstitutional under the First and Fourteenth Amendments of the United States Constitution;

B. Section 23-1385B(8) of the Act, which provides that it shall be an unfair labor practice for a labor organization or its agents to "induce or encourage . . . the ultimate consumer of any agricultural product . . . by the use of dishonest, untruthful and deceptive publicity . . ." is unconstitutional under the First and Fourteenth Amendments to the United States Constitution;

C. Section 23-1385B(11) which provides that it shall be an unfair labor practice for a labor organization or its agents to "intimidate, restrain or coerce agricultural employers in the exercise of the rights guaranteed by Section 23-1384 (management rights)" is unconstitutional under the First and Fourteenth Amendments;

D. Section 23-1385B(12) which makes it an unfair labor practice for a labor organization or its agents to picket, boycott or threaten to picket or boycott in a variety of situations is an unconstitutional prior restraint and infringement of free speech activities guaranteed by the First and Fourteenth Amendments.

Each of the foregoing provisions in Paragraph 14 constitutes a denial of due process and infringes upon the freedoms of speech, association and assembly because:

1. it is overbroad in that it encompasses within the scope of its prohibitions conduct which is protected free speech;

2. it is vague in that it fails to establish any ascertainable standards of guilt;

3. it is susceptible of arbitrary sweeping and improper application; and

4. it provides for an unconstitutional prior restraint on the plaintiffs' speech and their communications with the consuming public.

E. Section 23-1393 (B) providing that "in the case of a strike or boycott, or threat of a strike or boycott, against an agricultural employer, the court may grant and upon proper application shall grant as provided in this section, a ten-day restraining order enjoining such a strike or boycott" violates the First and Fourteenth Amendment rights of free speech and due process in that it permits the blanket enjoining of plaintiffs' First Amendment free speech activities without providing the plaintiffs with notice and an opportunity for a hearing to determine if the agricultural employer is in fact suffering irreparable harm and if the employees' strike or boycott activities are in any way unlawful.

F. Section 23-1385 (B) (13), which provides that it shall be an unfair labor practice for a labor organization or its agents "to call a strike unless a majority of the employees within the bargaining unit has first approved the calling of such a strike by secret ballot," denies the minority of employees in the bargaining unit those same fundamental rights in violation of the Equal Protection Clause of the Fourteenth Amendment.

G. The extensive provisions of the Act dealing with "Representatives and Elections" (23-1389) are tragically ill-suited for the agricultural industry and indicate a total disregard for the circumstances under which the plaintiffs live and work, including the largely seasonal nature of their work and their indigent state, and are, unconstitutional in that; *inter alia:*

1. the provisions disenfranchise many agricultural workers and will prevent them from organizing and gaining recognition of a union for the protection of their economic interests thereby violating the First and Fourteenth Amendments to the Constitution;

2. the provisions deny the plaintiff farm workers the use of all informal procedures designed to permit a union to demonstrate representation.

3. they deny the class of plaintiff equal protection of the laws in that they are singled out as the only class of workers limited to such restrictive voting recognition procedures.

H. The section "Prevention of Unfair Labor Practices" (23-1390) is also entirely ill-suited for agricultural employees. It ignores the seasonal and migrant nature of their work and their indigent state, thereby denying them an opportunity for meaningful hearings and are unconstitutional in that:

1. the provisions deny a process for unfair labor practice hearings to those agricultural employees who must move from ranch to ranch and frequently to another county or state to work.

2. the provisions restrict the processes for unfair labor practice proceedings to those who can afford the time and high costs of such proceedings thereby denying equal protection and due process of law to the members of the class of plaintiffs;

3. the application of the provisions would necessarily affect very personal and fundamental rights and interests and thereby constitute a denial of due process of law guaranteed by the Fourteenth Amendment.

I. Section 23-1392 establishing criminal penalties for violating any provision of the Act is unconstitutional in that:

1. it subjects only the plaintiff agricultural employees to criminal penalties for activities and conduct which when conducted by similarly situated employees of any other industry or occupation is not subject to criminal penalties, thereby denying the plaintiffs equal protection of the laws as guaranteed by the Fourteenth Amendment;

2. it fails to adequately and clearly define persons or activities which are subject to criminal prosecution and includes conduct which is protected under the First Amendment of the United States Constitution, and is therefore void for vagueness and overbreadth.

J. Section 23-1385 (C) unduly limits the contact and restricts the communication between the plaintiff Union and the plaintiff class of workers thereby infringing upon the plaintiffs' freedom of speech guaranteed by the First Amentment. Said Section's description of permissible form and content of speech is vague and overbroad, and, in conjunction with Section 23-1392, criminal penalties, will necessarily exert a chilling effect and prior restraint on the freedom of speech of the plaintiffs in violation of

the First Amendment to the United States Constitution.

K. Sections 1384 and 1385 (D) establish non-negotiable management rights and arbitrarily exclude from the topics subject to collective bargaining between employers and employees topics which are negotiable for employees and labor organizations not covered by the Act and which are are of utmost concern to agricultural employees. These sections in conjunction with the criminal penalties section 23-1392, are vague and overbroad, will necessarily exert a chilling effect on the plaintiffs during the negotiating process and prevent plaintiffs from engaging in effective collective bargaining, thereby constituting an unconstitutional infringement of plaintiffs' First Amendment rights.

L. Section 23-1382 (2) of the Act defines "agricultural employer" for purposes of coverage under the Act in such a way as to give some agricultural employers either the option or opportunity to decide whether or not they wish to be covered under the Act while making no provision to give similar option to the employees of these same employers. Such discrimination in terms of coverage under the Act constitutes a denial of due process and equal protection of the law prohibited by the Fourteenth Amendment.

M. The provisions of Section 23-1393(F) subjects the plaintiff Union to unfair labor practice proceedings and criminal penalties for the unauthorized and unratified acts of union members and unassociated

individuals and is therefore a denial of due process of law guaranteed by the Fourteenth Amendment to the United States Constitution.

N. The act, by narrowly defining "labor dispute" in Section 23-1382(6), unduly restricts the circle of economic competition to those workers immediately involved thereby excluding other farm workers and union members who have vital economic interests in the dispute, thereby infringing upon fundamental rights guaranteed by the First Amendment.

15.

As shown more fully hereinabove, the plaintiffs RUBEN ALANIZ and MATILDA VARELA are agricultural employees who are entitled to due process, equal protection of the laws and protection of their freedoms of speech and assembly as guaranteed by the Constitution of the United States. Plaintiff UNITED FARM WORKERS NATIONAL UNION and its agents and employees desire to continue to organize and participate in strikes, boycotts, peaceful picketing, collective bargaining and other concerted activities in support of such Union's demands for collective bargaining with agricultural employers in Arizona and elsewhere.

Defendants herein are the officials of the state of Arizona who are charged by the statute with the enforcement of the above Arizona Agricultural Employment Relations Act. These officials, including the defendant members of the Board, have begun to enforce the provisions of the Act against the Plaintiffs herein by the issuance of an unfair labor practice complaint directed against their boycott activities on

August 14, 1973. [See Exhibit "B"] These same defendants have threatened to continue such enforcement, and the plaintiffs are informed and believe and thereupon allege, will continue such enforcement against the plaintiffs in the near future unless enjoined by this Court as hereinafter prayed.

Such enforcement will cause plaintiffs severe, immediate and irreparable injury through deprivation of their constitutional rights, privileges and immunities as set forth above in Paragraphs 9 through 14. Such enforcement will diminish plaintiffs' rights of speech and association, deny opportunities to take part in meaningful collective bargaining and will disrupt existing bargaining relationships. It will decrease membership in the plaintiff Union and act to disrupt present harmonious relations between plaintiff employees and their employers. Enforcement of the Act, in fact, threatens the entire system of collective bargaining the plaintiffs have participated in and desire to continue to participate in. Such enforcement will also subject the plaintiffs to an unnecessary and harrassive multiplicity of suits and hearings. Damage to the above system and relationships will be irrevocable. There is no administrative remedy or remedy at law available to plaintiffs which will adequately vindicate such rights.

WHEREFORE, Plaintiffs pray that a three-judge court be convened pursuant to 28 U.S.C. 2281 and 2284 to hear and determine this action, that the cause be expedited and heard at the earliest date, and that this Court:

1. After hearing, issue a preliminary injunction against defendants and each of them, their agents and successors in office, and all other persons acting in concert with them, pending final determination of this action, from enforcing against plaintiffs and their class or in any other manner giving effect to, directly or indirectly the provisions of the Arizona Agricultural Employment Relations Act, Arizona Revised Statutes, Title 23, Ch. 8, Art. 5, Sections 23-1381 through 23-1395, including but not limited to enjoining the defendant members of the Board, their agents and staff from:

a) filing any future unfair labor practice complaints against the plaintiffs;

b) investigating or conducting hearings on unfair labor practice charges;

c) calling or conducting representation elections pursuant to 23-1389; and

d) initiating any civil or criminal proceedings in the superior court to enforce provisions of the Act.

2. Issue a permanent injunction restraining the defendants and each of them, their agents and successors in office, and all other persons acting in concert with them, from enforcing against plaintiffs and their class or in any other manner giving effect to directly or indirectly, the provisions of the aforesaid Arizona Agricultural Employment Relations Act.

3. Issue a declaratory judgment pursuant to 28 U.S.C. 2201 and 2202, adjudging and declaring that the provisions of the aforesaid Arizona Agricultural Employment Relations Act are null and void on their fact as violative of the free speech and assembly provi-

sions of the First Amendment to the United States Constitution, the due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution, the "supremacy" provisions of Article VI, Cl. 2 of the United States Constitution, the "commerce" provisions of Article I, Sec. 8, Cl. 3 of the United States Constitution, and Article I, Sec. 10 of the United States Constitution.

4. Award the plaintiffs their costs of suit herein, including reasonable attorneys fees.

5. Grant such other and further relief as it may deem just and appropriate.

COHEN, CARDER,
ENGELHARDT & RUTKOWSKI

By: _____
James Rutkowski

Dated: Aug. 27th, 1973

VERIFICATION

STATE OF ARIZONA }
County of Maricopa } ss

RICHARD B. COOK, being first duly sworn according to law, deposes and says:

That he is the Director of the United Farm Workers National Union in the state of Arizona and is authorized to make this verification on its behalf;

That from his knowledge of the above Act and of the mobile status of most Arizona farm workers, he knows it will be extremely difficult and in many cases virtually impossible for those workers to be able to participate in any meaningful or successful way in the election and hearing procedures established by the Act.

That the Act's restrictions on picketing, boycotting and collective bargaining activities deny the plaintiff Union the effective use of these vital and essential economic labor tools in establishing a meaningful bargaining position with agricultural employers.

That without this effective bargaining position it is impossible to obtain any benefits regarding wages, hours and working conditions for the employees the Union represents.

That the application of the Act has already had a seriously damaging effect on the organizing activities of the plaintiff Union in Arizona and that continued enforcement will further result in the loss of organizing advances that will not be able to be regained.

That the Union boycott activities have been and are being impaired by the application of the Act. Many people who are assisting in the boycott activities have unduly refrained from saying many things that they otherwise would in support of the boycott for fear of prosecution under the Act. Some people who have helped in these activities in the past have refrained from the current boycott efforts altogether for fear of incurring civil liability or criminal sanctions.

The provisions of the challenged Act have been used in several lawsuits during the past few months to restrict the Union's strike and boycott activities. The defendant Board herein has filed charges against the Plaintiff Union based on the Act and the affiant believes will continue to file similar complaints from agricultural employers and others.

That in some of the above suits the enforcement of the Act has resulted in the enjoining of some speech activity that the affiant believes is protected by the First Amendment to the United States Constitution.

That this application and enforcement of the Act is already and will continue to diminish the plaintiffs rights of speech and association, deny opportunities to take part in meaningful collective bargaining and is disrupting existing bargaining relationships. It will decrease membership in the plaintiff Union and is disrupting present harmonious relations between plaintiff employees and their employers. Enforcement of the Act is threatening the entire system of collective bargaining the plaintiffs have participated in and desire to continue to participate in. Such enforcement is also subjecting the plaintiff Union and plaintiff workers to many lawsuits and administrative hearings which they have neither the time nor money for legal services to participate in. Continued enforcement of the Act will make it impossible to repair the damage already done to the plaintiffs' organizing efforts.

Richard B. Cook

(Jurat Omitted in Printing)

DEFENDANTS' MOTION TO DISMISS AND RESPONSE TO PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

Filed October 1, 1973

(Title Omitted in Printing)

Defendants herein interpose the following Memorandum in opposition to the Plaintiffs' Motion for Preliminary Injunction and Motion to Dismiss on the doctrine of latches.

Respectfully submitted this 1 day of October, 1973.

GARY K. NELSON
The Attorney General

MICHAEL S. FLAM

JAMES B. FEELEY
Assistant Attorneys General
1717 W. Jefferson, Phoenix, Arizona
Attorneys for Defendants

MEMORANDUM

This action was originally filed on August 14, 1972. In their Complaint the Plaintiffs prayed for a preliminary injunction (1) interdicting enforcement of the Arizona Agricultural Employment Relations Act against the Farm Labor Union and field workers, (2) preventing the Governor from appointing the Agricultural Employment Relations Board and (3) appointing General Counsel to the Board. Permanent injunctive

relief was also prayed for against Arizona's Attorney General, Treasurer, and Finance Commissioner presumably to prevent funding of the duties required to be carried out under the Act. They further sought a declaration of the Act's unconstitutionality as a whole.

The carnival-like atmosphere and inspirational renderings to the media attendant to the filing of the original complaint appeared to be the harbinger of vigorous litigation. Plaintiffs' opening volley was followed by an apparent cancellation not only of the battle but the war as well. The original complaint was never served upon Defendants. Months passed. Plaintiffs seemed to have lost interest and the imminence of litigation faded away.

By October the likelihood of this action being pursued seemed remote. The road seemed to be clearing for the Board to secure staff to exercise its statutory authority. A.R.S. § 23-1388. Appointment of an Executive Secretary who proceeded to build an administrative staff prompted no reaction from the Plaintiffs. With the appointment of General Counsel, the Board was ready to begin functioning by December. The Plaintiffs continued their silence. Not even the filing of charges of unfair labor practices moved them to action. The Board continued to function at a public expense of approximately $68,000 through August of 1973. On the 29th day of that month the United Farm Workers National Union served its Amended Complaint.

A state of facts where the plaintiff has been dilatory and because of the delay the other party has reasonably changed his position to his detriment is appropriate for invoking the doctrine of latches. *Jerger*

v. Rubin, 106 Ariz. 114, 471 P.2d 726 (1970). After bringing suit requesting preliminary injunctive relief, which as one of its prerequisites requires the imminence of irrevocable har, (sic) 190 F.2d 601 (1951), the plaintiffs neglected to even attempt service. Defendants' only notice of the action's existence was through the public information media. Based on this half-hearted beginning, followed by over a year of silence, the Defendants felt safe in carrying out the mandate of A.R.S. § 23-1381 et seq. Had there been any interest shown by the Plaintiffs, the State would have stayed its hand to avoid possible conflict with this Court. Because of Plaintiffs' lack of diligence in their own law suit the acts and very existence of a state agency, even its authority to have spent over $68,000 is now drawn into question. There is no reason for the Plaintiffs' delay. Likewise, there is no reason for the people of Arizona — particularly all sectors of the farming community — to bear the burden and expense of the United Farm Workers National Union's inaction. Arizona law requires application of the doctrine of laches in this case. See especially *Barr v. Petzhold*, 77 Ariz. 399, 273 P.2d 161 (1954); *Felix v. Superior Court of Pima County*, 92 Ariz. 247, 375 P.2d 730 (1962).

GARY K. NELSON
The Attorney General

MICHAEL S. FLAM

JAMES B. FEELEY
Assistant Attorneys General

1717 W. Jefferson, Phoenix, Arizona
Attorneys for Defendants

(Affidavit of Service Omitted in Printing)

ORDER FOR INTERVENTION
(Title Omitted in Printing)

A Motion for Intervention, pursuant to Rule 24(a), Federal Rules of Civil Procedure, having been filed by ARIZONA FARM BUREAU FEDERATION, an Arizona corporation; ARIZONA GRAPE GROWERS' ASSOCIATION, an Arizona corporation; VEGETABLE GROWERS ASSOCIATION, an Arizona corporation, and YUMA CITRUS SHIPPERS' ASSOCIATION, an unincorporated association;

Memoranda having been filed by the parties, and oral argument having been heard on November 5, 1973, and good cause appearing therefor;

IT IS HEREBY ORDERED PERMITTING THE INTERVENOR-APPLICANTS TO INTERVENE AS PARTY DEFENDANTS IN THIS ACTION.

DONE this 5th day of November, 1973.

Judge Carl A. Muecke

(Affidavit of Service Omitted in Printing)

ANSWER OF INTERVENOR-APPLICANTS AND RESPONSE TO APPLICATION FOR THREE JUDGE COURT
Filed October 1, 1973
(Title Omitted in Printing)

In answer to plaintiffs' Complaint, intervenor-applicants admit, deny and allege as follows:

I

Deny each and every allegation not specifically admitted herein.

II

Allege that the plaintiffs' Complaint fails to state a claim upon which relief can be granted.

III

Allege that this Court lacks jurisdiction over the subject matter.

IV

Allege insufficiency of service in that the Complaint was not served within one year as is required by Rule 38, Rules of Practice in the United States District Court for the District of Arizona, and that the Complaint should be dismissed therefor.

V

Allege that the Complaint should be dismissed for failure to allege the requisite jurisdictional amount required by 28 U.S.C. § 1331.

VI

Answering paragraph I, admit the statement of the nature of the Complaint, but deny the existence of jurisdiction under any of the statutes enumerated therein.

VII

Answering paragraph II, admit that the ultimate issue of this case would be properly determined by a Three Judge Court.

VIII

Answering paragraphs III, IV and V state that they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein.

IX

Answering paragraph VI deny the allegations therein.

X

Answering paragraph VII allege that they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein.

XI

Answering paragraphs VIII and IX admit the allegations therein.

XII

Answering paragraphs, X, XI, XII, XIII and XIV deny the allegations therein.

XIII

Answering paragraph XV allege that as to the first paragraph thereof they they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein; admit the allegations in the second paragraph thereof; and deny the allegations in the third paragraph thereof.

WHEREFORE, intervenor-applicants pray:

1. That the plaintiffs' Complaint be dismissed and no relief be granted thereof;

2. That no preliminary or permanent injunction be issued upon plaintiffs' Complaint;

3. In the alternative to the dismissal of the plaintiffs' Complaint, pray for a declaratory judgment adjudging and declaring that the provisions of the Arizona Agricultural Employment Relations Act are valid and constitutional;

4. For such other and further relief as the Court may deem just in the premises.

Respectfully submitted,
JENNINGS, STROUSS & SALMON

By _____
Jon L. Kyl

(Affidavit of Service Omitted in Printing)

ORDER DENYING MOTION TO DISMISS AND IMPANELING THREE-JUDGE COURT
(Title Omitted in Printing)

The Court having considered the defendants' motions to dismiss, and the plaintiffs' motion for a preliminary injunction and application for a three-judge court pursuant to Title 28 U.S.C. §§ 2281 and 2284, and the responses thereto, and the parties having appeared and argued these motions orally,

IT IS HEREBY ORDERED that the defendants' motions to dismiss are denied and the plaintiffs' motion for a preliminary injunction is denied.

IT IS FURTHER ORDERED that a three-judge court be impaneled pursuant to Title 28 U.S.C. §§ 2281 and 2284.

IT IS FURTHER ORDERED that the parties shall hereafter file an original and four copies of all their pleadings with the Clerk of the Court.

The parties will be notified when and where the three-judge court will be convened to conduct further hearings in this matter. All memoranda previously filed by the parties may be copied and used in support of any motions or other pleadings filed by the parties, directed to the three-judge court.

The Court will also notify the parties of any pre-trial hearings to be conducted to delineate the issues to be heard at any hearing that may be conducted, to reduce and simplify the issues, to list witnesses and exhibits, if any there be, and to prepare for a hearing

by following the procedure outlined in Local Rule 42, as much as this is determined to be necessary by the Court.

In the event of a hearing, the parties are requested to see if they can agree that such a hearing shall deal with whether or not a permanent injunction should or should not issue, not just a temporary one. This is suggested by the Court because this practice was proven to be useful in other similar cases where only one hearing was required to be held instead of two.

DATED this 24th day of October, 1974 at Phoenix, Arizona.

C. A. Muecke
United States District Judge

Copy of foregoing mailed this
25th day of October, 1974 to:

Cohen Carder Engelhardt & Rutkowski
Bruce Meyerson
The Attorney General
Office of the Governor
Jennings Strouss & Salmon

ORDER DESIGNATING UNITED STATES CIRCUIT JUDGE AND UNITED STATES DISTRICT JUDGES PURSUANT TO § 2284, TITLE 28, UNITED STATES CODE

Whereas in my judgment the public interest so requires, I, pursuant to the provisions of § 2284, Title 28, United States Code, do hereby designate and appoint the

HONORABLE OZELL M. TRASK,

United States Circuit Judge for the Ninth Circuit, and the

HONORABLE WALTER E. CRAIG

and the

HONORABLE C. A. MUECKE,

United States District Judges for the District of Arizona, to hold court for the District of Arizona at a time and place to be agreed upon by said judges, and to hear and determine the following cause:

United Farm Workers National Union, etc.,
v. Jack Williams, Governor, etc., Civ. 72-445
PHX - CAM,

and all motions and proceedings therein.

DATED: October 29, 1974.

Chief Judge, Ninth Circuit

cc: Judge Trask
cc: Judge Craig
cc: Judge Muecke
cc: Clerk, Ariz.
cc: Clerk, 9 CA

ANSWER OF DEFENDANTS GENE BLAKE, WILLIAM S. BOICE, JOHN L. CONSAUL, JACK MONTGOMERY, JACK MC MANUS, MILTON G. SANDERS, JESSE A. UDALL AND JACK D. WILLIAMS, INDIVIDUALLY AND AS MEMBERS OF THE ARIZONA AGRICULTURAL EMPLOYMENT RELATIONS BOARD

Filed November 4, 1974

(Title Omitted in Printing)

Comes now defendants GENE BLAKE, WILLIAM S. BOICE, JOHN L. CONSAUL, JACK MONTGOMERY, JACK MC MANUS, MILTON G. SANDERS, JESSE A. UDALL and JACK D. WILLIAMS, individually and as members of the Arizona Agricultural Employment Relations Board, by and thru Robert E. Dickelman, General Counsel to the Board, answering the Complaint in the above captioned case, admitting, denying and alleging as follows:

1.

Above defendants deny the allegations contained in paragraphs 1 and 2 of said Complaint.

2.

Are without knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraphs 3, 4, 5, 6 and 7 of said Complaint and therefore deny the allegations contained therein.

3.

Admit the allegations contained in paragraphs 8 and 9, except for the allegations in paragraph 8, lines 14, 19, 21, and 26, that allege respectively, that Gary Nelson is the Attorney General of the State of Arizona; that Jesse A. Udall is a member of the Agricultural Employment Relations Board; that Jack Doe Williams is Executive Secretary of that Board; and that Ernest Garfield is the Treasurer of the State of Arizona; which are denied.

4.

Deny the truth of each and every allegation contained in paragraphs 10, 11, 12, 13, and 14, and each and every sub-paragraph thereto.

5.

Are without knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph 15, lines 17 thru 26, and therefore deny the allegations contained therein; admit the allegations contained in paragraph 15, lines 27 thru 32, page 12 and lines 1 thru 6, page 13; and deny the truth of the allegations contained in paragraph 15, lines 7 thru 23, page 13.

AFFIRMATIVE DEFENSES

By way of Affirmative Defenses, the above Defendants allege:

6.

That Plaintiffs fail to state a claim upon which relief can be granted.

7.

That this Court is without jurisdiction over the subject matter.

8.

That Plaintiffs are without standing before this Court.

9.

That this action is premature and not ripe for adjudication by this Court.

10.

That Plaintiffs fail to allege an act or omission by Defendants upon which jurisdiction of this Court can be predicated.

WHEREFORE, the above named Defendants pray:

1. That the Plaintiffs' Complaint be dismissed and no relief be granted thereof;

2. For such other and further relief as the Court may deem just and proper.

Respectively submitted this 4th day of November, 1974.

Robert E. Dickelman
General Counsel
Agricultural Employment
Relations Board

(Affidavit of Service Omitted in Printing)

ANSWER OF DEFENDANTS JACK WILLIAMS, GOVERNOR OF THE STATE OF ARIZONA, GARY NELSON, ATTORNEY GENERAL, ERNEST GARFIELD, TREASURER, AND TED G. HAWKINS, FINANCE COMMISSIONER

Filed November 4, 1974

(Title Omitted in Printing)

For their Answer, Defendants admit, deny and allege as follows:

I.

The Defendants admit Paragraphs III, IX, VIII of Plaintiffs' First Amended Complaint; except that they deny that Gary K. Nelson is the Attorney General of the State of Arizona, that Ernest Garfield is the Treasurer of the State of Arizona and that Jesse A. Udall is a member of the Agricultural Employment Relations Board. The Defendants further admit lines 28-32 appearing on Page 1 of Paragraph I, and lines 27-32 appearing on Page 12 and line 1 appearing on Page 13 of Paragraph XV.

II.

The Defendants deny the following portions of the Plaintiffs' First Amended Complaint: lines 1-9 appearing on Page 2 of Paragraph I, Paragraph II, VI, X, XI, XII, XIII and lines 2-28 of Paragraph XV appearing on Page 13.

III.

The following parts of the Paintiffs' First Amended Complaint are denied for the reason that Defendants do not have sufficient information upon which to form

a belief as to the truth or falsity of the allegations: Paragraph IV, V, VII and lines 17-26 of Paragraph XV appearing on Page 12 of the Complaint.

IV.

All allegations not hereinbefore explicitly admitted or denied are hereby denied.

V.

AFFIRMATIVE DEFENSES

1. The Court lacks jurisdiction over the subject matter;

2. The Complaint fails to state a claim upon which relief can be granted:

3. The Plaintiffs have failed to allege any act or omission undertaken by the Defendants in their individual capacity and therefore have failed to state a claim against any of the Defendants individually;

4. The Plaintiffs are without standing to bring this action;

5. The claim sought to be stated is premature and abstract and therefore not ripe for adjudication;

6. The claim sought to be stated is a proper one for invoking the doctrine of abstention.

RESPECTFULLY submitted this 4th day of November, 1974.

N. WARNER LEE
The Attorney General

JAMES B. FEELEY
Assistant Attorney General

STATE OF ARIZONA }
County of Maricopa } ss

JAMES B. FEELEY, being first duly sworn, upon his oath deposes and says:

That he is the attorney for the Defendants and that he makes this verification for and on behalf of said Defendants, being acquainted with the facts.

Affiant further states that he has read the above and foregoing Answer and knows the contents thereof; that the same is true of his own personal knowledge except as to those statements made therein upon information and belief and as to those, he believes them to be true.

JAMES B. FEELEY

(Jurat and Affidavit of Service Omitted in Printing)

AMENDED ORDER DESIGNATING UNITED STATES CIRCUIT JUDGE AND UNITED STATES DISTRICT JUDGES PURSUANT TO § 2284, TITLE 28, UNITED STATES CODE

Whereas in my judgment the public interest so requires, I, pursuant to the provisions of § 2284, Title 28, United States Code, do hereby designate and appoint the

HONORABLE JOHN F. KILKENNY,

United States Circuit Judge for the Ninth Circuit, and the

HONORABLE WALTER E. CRAIG

and the

HONORABLE C. A. MUECKE,

United States District Judges for the District of Arizona, to hold district court for the District of Arizona at a time and place to be agreed upon by said judges, and to hear and determine the following cause:

United Farm Workers National Union, etc.,
v. Jack Williams, Governor, etc., Civ. 72-445
PHX - CAM,

and all motions and proceedings therein.

This order revokes and supersedes my order of October 29, 1974, and replaces the Honorable Ozell M. Trask, who has recused himself, with the Honorable John F. Kilkenny.

DATED: November 11, 1974.

Chief Judge, Ninth Circuit

IM
cc: Judge Kilkenny
cc: Judge Muecke

cc: Judge Craig
cc: Clerk, Ariz.
cc: Clerk, 9 CA

ORDER RESERVING RULING ON MOTION TO DISMISS
(Title Omitted in Printing)

The defendants' motion to dismiss filed November 27, 1974, having come on for hearing before the three-judge panel on January 13, 1975, said panel having heard the oral arguments of the parties, enters the following order:

1. Ruling on the defendants' motion to dismiss is reserved.

2. A final hearing to dispose of the case will be set following additional preparation by the parties for such hearing.

3. Supervision of such preparation and a schedule to be followed by the parties in such preparation will be ordered by the judge to whom this case was originally assigned, the Honorable C. A. Muecke.

To that end, a pretrial conference was held with Judge Muecke on January 15, 1975, with the following attorneys present: James Rutkowski for plaintiffs, Michael Flam for Defendant Office of the Attorney General, Robert Dickelman for Defendant Agricultural Employment Relations Board, and Jon Kyl and Charles Jones for Intervenors Arizona Farm Bureau Federation.

The parties agreed at that pretrial conference that a final hearing with the three judges presiding could dispose of this case by way of a ruling on the defendants' motion to dismiss, or cross-motions for

summary judgment, or a trial to the three-judge court, and it is so ordered.

The preparation schedule for such final hearing is ordered as follows:

1. The plaintiffs will formulate all factual issues no later than February 3, 1975.

2. The plaintiffs and the defendants will meet on February 17, 1975, to agree on the stipulated facts and the disputed facts, if any. It is recommended that the parties follow the procedures outlined in Local Court Rule 42A.1.

3. On March 17, 1975 at 2:00 P.M., the parties will hold a pretrial conference with Judge C. A. Muecke to present the facts agreed upon and those contested, if any. If facts are contested, the parties shall submit the names and addresses of the witnesses they propose to call, together with a summary of their proposed testimony, and a list of the exhibits with a brief description. The parties shall also inform the court if they believe any discovery is necessary, and if so, when and how they propose to do it.

The parties shall also discuss with the court the form they believe the pleadings should take to dispose of this case, together with a schedule of time when the pleadings and briefs will be filed.

The parties will inform the court as to their estimate of the time the final hearing will take, and the court will fix a date for such hearing to the convenience of the parties and the three-judge court.

DATED: January ___, 1975.

By: C. A. Muecke
With the approval and consent of
Judges Kilkenny and Craig.

PRE-TRIAL ORDER
(Title Omitted in Printing)

I

This action is one for declaratory and injunctive relief challenging the constitutionality of the Arizona Agricultural Employment Relations Act (Act), in its entirety and its various parts, A.R.S. § 23-1381 *et seq.* (1972).

1. The Plaintiffs are: United Farm Workers National Union, on behalf of itself and its members, Gustavo Gutierrez, an agent of the United Farm Workers National Union in the State of Arizona, Ruben Alaniz and Matilda Varela on behalf of themselves and all others similarly situated, and Wendy Rose, an individual.

2. The Defendants are: Raul Castro, Governor of the State of Arizona, Bruce Babbitt, Attorney General of the State of Arizona, Bart Fleming, Treasurer of the State of Arizona, Raymond Long, Finance Commissioner of the State of Arizona, Gene Blake, William S. Boice, Jack Montgomery, Keith Walton, Jack McManus, Milton G. Sanders, individually and as members of the Arizona Agricultural Labor Relations Board and Theresa Bond, in her capacity as Executive Secretary.

II

3. Plaintiffs contend jurisdiction of this Court is based upon 28 U.S.C. § 1343, 42 U.S.C. § 1983 and 28 U.S.C. §§ 2201 *et seq.*

Defendants and Intervenors deny that the Act or any part of it is unconstitutional and contend that the Court should abstain from deciding the issues raised by Plaintiffs or, in the alternative, determine that no justiciable issue has been presented for review.

III

The following facts, offered by the Plaintiffs, are admitted by the parties and require no proof:

1. That there are substantial variations in the length of preparation and harvest seasons from crop to crop plus varying levels of workers employed even within each of these preparations and harvest seasons.
2. That there are substantial variations in preparation and harvest seasons which range from a few weeks to several months.
3. That there are substantial variations in the size of the work force for each preparation and harvest season which range from a few workers to several hundred workers.
4. That the highest number of field workers employed by an agricultural employer are employed during the peak of the harvest season.
5. That the majority of agricultural employees as defined by the Act are directly engaged in the planting, preparation and/or harvesting of row crops, field crops, tree fruits and grapes, as con-

trasted with the much smaller number of agricultural employees engaged in operations related to the raising and caring of cattle, sheep, poultry and other animals and insects.

6. That the function of "stitching" referred to in A.R.S. § 23-1382 1(g), is the assembling of cartons in which produce is to be packed. This function, which occurs during the harvest, generally occurs on the back of a truck or wagon (in the field) and sometimes occurs at a location or facility away from the field and away from the farm. The function of "hauling" referred to in A.R.S. § 23-1382 1(g) is the transporting of produce after it has been harvested. The function of packing agricultural produce may occur in the field or in a shed or facility on or off the farm.

7. A stipulated statement of the status of all matters handled or pending before the Agricultural Employment Relations Board and litigation involving the Act is attached.

IV

The following are the issues of fact Plaintiffs contend should be tried and determined in a trial. For the reasons noted in Paragraph II above, Defendants and Intervenors contend it is not necessary or proper that these issues be tried and determined:

1. That the definition in A.R.S. § 23-1382(1) limits the application of the Act to the occupational class of agricultural employees, which class:

A. Is an occupational category in Arizona with a majority of racial and ethnic minority members;

B. Is composed of one of the highest, if not the highest, percentage of employees from racial and ethnic minorities in comparison to other occupational categories;

C. Is composed of among the lower, if not the lowest, paid workers of any occupational category; and

D. Consists of workers who have historically suffered and now suffer from more social and political discrimination and disadvantage than most, if not all, other occupational categories.

Defendants and Intervenors contend there are two parts to this statement, and that the first is a legal issue. The definition of "employee" in the Act does not "limit" its application, except to the extent that the entire Act is limited to the field of agriculture generally — i.e., it applies to all agricultural employees in Arizona. Further, it is incorrect to say that all agricultural employees are an "occupational class." The definition of "agriculture" in A.R.S. § 23-1382(3), which clarifies the meaning of "agricultural employees" in § 23-1382(1), includes *all* services performed on a farm, as defined in A.R.S. § 23-603; and that definition obviously includes every single aspect of agriculture in the State.

Defendants and Intervenors, therefore, contend the first statement is erroneous; and further deny the four substatements and the relevancy and materiality of all of the statements; and contend the Act essentially covers all of the agricultural employees not covered by the National Labor Relations Act, and all employees working in agriculture in this State. They further contend that whether or not the Arizona Act happens to apply to a majority of people who are racial minorities and are economically, socially and politically "disadvantaged" is irrelevant to the constitutionality of the Act, and, on that basis, moved to exclude testimony going to the racial, ethnic, economic and political composition of the farmworkers.

The Court granted the Motion in Limine by order dated November 29, 1976. The effect of the Court's order is to eliminate presentation of evidence on the issues stated in Paragraph IV 1 and 2 herein. Plaintiffs have filed an offer of proof on the facts contained in both of these Paragraphs, contending they are relevant to equal protection considerations.

2. The Act discriminates against "field workers" by exempting from coverage agricultural workers who pack inside the sheds, assemble the containers in which produce is packed and haul produce [A.R.S. § 23-1382(1) & (1) (g)] in that:

A. Field work has traditionally been the lower social and economic status job among agricultural workers as compared to these exempted categories;

B. Field workers covered by the Act are composed of a higher percentage of racial minorities and are lower paid than the agricultural workers excluded by the Act;

C. Field workers compared to other agricultural workers are more migratory and more politically disadvantaged.

Defendants and Intervenors contend the allegation of discrimination is a statement of law, that the statement is not accurate, relevant or material, and further contend that the statement regarding social and economic status is a matter of opinion not capable of factual determination. They further contend the statement is irrelevant to the constitutionality of the Act. Pursuant to the Court's Order granting the Motion in Limine, *supra*, no evidence will be presented on this statement; and Plaintiffs have filed an offer of proof thereon.

3. A strike or other concerted activity by "stitchers," "haulers," or packing shed employees can interrupt the total process of harvesting, packing and producing agricultural products as would a strike or other concerted activity by field workers.

Defendants and Intervenors contend that the statement is speculative and dependent upon a variety of circumstances, and that a strike by these three groups is probably less disruptive than by those actually harvesting.

4. The majority of agricultural workers, as defined by the Act, are *temporary* and *seasonal* employees. The length of the election and unfair labor practice procedures will often exceed the seasonal periods of

employment for many workers, thereby denying these workers their right to vote and to associate due to:

A. The substantial variations in preparation and harvest seasons which range from a few weeks to several months; and

B. The substantial variations in the size and composition of the work force for each preparation and harvest season which range from a few workers to several hundred.

Defendants and Intervenors contend that the Act will not on its face, or as applied, deny workers the right to associate as alleged and further contend that experience with the Arizona Act has shown that elections and unfair labor practice procedures need not exceed the seasonal periods of employment. They, therefore, contend that the statement is speculative and incorrect and that any evidence relating to such hypothetical statements is conjectural, irrelevant and immaterial.

5. Procedures for establishing recognition of a union in lieu of a valid secret ballot for the purpose of enforcing upon a particular agricultural employer a duty to bargain with a union as the exclusive representative of his agricultural employees are essential to guarantee to agricultural employees their constitutional and statutory rights. These alternative procedures may include, *inter alia,* authorization cards signed by a majority of employees, an informal poll, a union-called strike vote, a strike or recognitional picketing.

Defendants and Intervenors contend the statement is an issue of law, not a statement of fact, does not raise an issue of constitutionality and, therefore, is irrelevant and immaterial to a determination of the issues of the case. They have, therefore, moved to eliminate evidence on the statement.

6. Negotiation in collective bargaining of the topics defined as management rights in A.R.S. § 23-1384 are essential to the formation of a meaningful collective bargaining agreement and for the full protection of rights of agricultural employees.

Defendants and Intervenors contend the statement is not a statement of fact, does not raise an issue of constitutionality and is, therefore, irrelevant and immaterial. Further, certain portions of it are incapable of definition (such as "meaningful bargaining agreement"). Defendants and Intervenors have, therefore, moved to eliminate evidence on the statement.

7. Passage and subsequent enforcement of the AAERA has caused substantial and irreparable harm to the Plaintiffs herein, including the Plaintiff Union, by causing a loss of membership, disruption of bargaining relationships, creation of obstacles to new collective bargaining agreements, and undue restriction and harassment regarding the Plaintiffs' legitimate boycott activities.

Defendants and intervenors contend that some of the allegations contained in the statement are conclusions of law, that the statement is not accurate, relevant or material, and further contend that the

statement is purely speculative and hypothetical since Plaintiff Union has refused to try to operate under the law.

8. There are a substantial number of persons under 16 years of age who are employed as farmworkers by agricultural employers in the planting, cultivating and harvesting of agricultural products.

Defendants and Intervenors deny the statement and contend it raises no constitutional issue in any event.

V

The following are the issues of law to be tried and determined upon trial;

The following list of legal issues follows the allegations set forth in the Amended Complaint of August 27, 1973, beginning with Paragraph 10, page 5.

Each allegation, except for those marked with an asterisk, challenges the constitutionality of the entire Act or specific provision on its face. Although those allegations noted with an asterisk call for some evidence, e.g., the nature of the class regulated, Plaintiffs contend, they are still essentially challenges to the Act as written and not as applied:

*1. The entire Act violates the Equal Protection Clause of the United States Constitution (par.12);

2. The entire Act is unlawful Bill of Attainder (13);

3. § 23-1385 (B) (6) and (7) violates the First Amendment (14A);

4. § 23-1385 (B) (8) violates the First Amendment (14B);

5. § 23-1385 (B) (11) violates the First Amendment (14C);

6. § 23-1385 (B) (12) violates the First Amendment (14C);

7. § 23-1393 (b) violates the First and Fourteenth Amendment (14E);

8. § 23-1385 (b) (13) violates the First and Fourteenth Amendment (14F);

9. § 23-1389 (Representation Elections) violates the First and Fourteenth Amendments (14 G);

10. § 23-1390 (Unfair Labor Practices) violates the Fourteenth Amendment (14H);

11. § 23-1392 violates the First and Fourteenth Amendment (14I);

12. § 23-1385 (c) violates the First Amendment (14J);

*13. §§ 1384 and 1385 (D) violate the First amendment (14K);

14. § 23-1382 (2) violates the Fourteenth Amendment (14L);

15. § 23-1393 (F) violates the Fourteenth Amendment (14M);

16. § 23-1382 (6) violates the First Amendment (14N);

Defendants and Intervenors deny the statements of law set forth by the Plaintiffs and further allege that the Court should abstain from deciding the issues, or, in the alternative, determine that they are not ripe for

review, all as has been set forth in the motions of the Defendants and Intervenors pending before this Court.

Plaintiffs also raise two other legal issues:

17. That this action should be designated a class action, as set forth in Plaintiffs' motion to that effect.

Defendants and Intervenors object to the class action designation for the reasons set forth in their response to Plaintiffs' motion.

18. Plaintiffs submit that some agricultural employees excluded from the AAERA by its exemption for stitchers, haulers and packing shed workers (A.R.S. § 23-1382) are also not subject to the jurisdiction of the National Labor Relations Act. Plaintiffs contend that this blanket exemption from the AAERA of employees engaged in these functions is invidiously discriminatory and not founded on any rational basis, since the excluded employees are similarly situated to those regulated by the Act and can as effectively interrupt the production and harvest of agricultural products as those employees who are covered.

Defendants and Intervenors contend that coverage of employees under the Act can only properly be determined on a case-by-case basis, since each case is different. Employees alleged to be stitchers, haulers or shed workers have been held to be covered by the National Labor Relations Act; others have been excluded from its coverage. Constitutionality of a state statute should not be decided upon hypothetical determinations. Therefore, Defendants and Intervenors contend

that, if, in a given situation, an employee is found to be excluded both from coverage of the NLRA and the AAERA, the legal issue of whether he *should be* covered by the AAERA is one properly raised at that time, under those circumstances and by the one allegedly aggrieved.

Defendants and Intervenors raise the following legal issues:

There are pending and potential state court actions and cases pending before the Agricultural Employment Relations Board which have and will appropriately decide questions of interpretation, application and even constitutionality of portions of the Act; therefore, this Court should abstain from deciding the issues raised by the Plaintiffs in this case. Second, this case does not present any issues which are ripe for review or which present a justiciable case or controversy required under Article III of the United States Constitution — Plaintiff's attack is a broad-based attack on a complex regulatory statute on purely hypothetical grounds, which, as a matter of law, this Court should not consider.

Plaintiffs contend that abstention is not appropriate; that the federal courts are still the primary forum for the vindication of federal rights and parties need not exhaust state remedies before approaching that forum. Furthermore, Plaintiffs contend it is established that cases raising civil rights and fundamental constitutional issues are the least appropriate for abstention; and that the federal Declaratory Judgment

Act was designed to allow for the determination of all rights in a single action rather than force parties to test those rights through continuous litigation.

Plaintiffs also contend the active enforcement of this Act against the Plaintiffs herein both in the courts and before the Defendant Board, as well as the constant threat of its enforcement against their strike and boycott activities has been more than sufficient to establish the requisite controversy and justiciability.

VI

Plaintiffs list the following exhibits, all or some of which may be offered for introduction at the trial of this case. Defendants and Intervenors stipulate to the admissibility of all Plaintiffs' proposed exhibits as to proper foundation. Defendant and Intervenors object to all exhibits offered by Plaintiffs on the grounds that they are irrelevant and immaterial to any issue in the lawsuit, in that they do not relate to any issue which is ripe for review or which presents a justiciable case or controversy. Further, Exhibits 2 and 4 are prejudicial, containing material which has been eliminated by the granting of the Motion in Limine; and No. 2 is irrelevant and not probative on the issue for which it is presented, i.e., fact statement 8.

1. 1974 Arizona Agricultural Statistics, p. 1 compiled by:
   Arizona Crop and Livestock Reporting Service, a cooperative function of:
   A. The University of Arizona; and
   B. U. S. Department of Agriculture.

2. Median family income of farm wageworker households. USDA Agricultural Report No. 251 (1971), p. 8.

3. In-season Farm Labor Reports (Arizona)
   U. S. Department of Labor (Bureau of Employment Security)
   Form ES-223 (Arizona) February 1974 — February 1976 particularly for Maricopa, Pinal and Yuma Counties.

4. Department of Labor, Manpower Administration "Inter Area Manpower Comparison" for the nation and the following states among others:

Arizona	California
Texas	Georgia
Florida	North Carolina

Defendents and Intervenors list the following exhibits, all or some of which may be offered for introduction at the trial of this case.

Plaintiffs stipulate to the admissibility of all of Defendants' and Intervenors' exhibits and to the relevancy of all the exhibits.

1. Agricultural Employment in Arizona since 1950; Arizona State Employment Service affiliated with U. S. Department Service; March 1968 (added to 1973);

2. Arizona Labor Force Data, January to December, 1974;

3. Arizona Agricultural Statistics, 1974*;
   Arizona Crop and Livestock Reporting Service, March, 1975; only back cover and identification page.

4. In-Season Farm Labor Report (Arizona)
   U. S. Department of Labor (Bureau of Employment Security); Form ES-223 for Selected Counties and Dates.

5. Seasonal Agricultural Labor Use for 1974 by Month; Form ES-223 Reports.

VII

The following witnesses may be called by the Plaintiff to testify at the trial of this case:

1. Mr. Cesar Chavez, P. O. Box 62, Keene, California;

2. Mr. Gustavo Gutierrez, 309 Beck, Tempe, Arizona;

3. Mr. Lupe Sanchez, 2108 East Lemon, Tempe, Arizona;

4. Dr. Marshall Berry, 519 Boshporus Avenue, Tampa, Florida; and

5. Mr. Stan Lubin, 3003 North Central Avenue, Phoenix, Arizona.

The following witnesses may be called by Defendants and/or Intervenors as witnesses at the trial of this case:

1. Scott Chadwick, Employer Service Representative, P. O. Box 6123, Phoenix, Arizona 85005;

2. William Foster, Cost Center Manager, Department of Economic Security, P. O. Box 6123, Phoenix, Arizona 85005;

3. Ralph Bodine, 2321 East Highland Avenue, Phoenix, Arizona;

4. Leroy Bridges, 2238 North 10th Street, Phoenix, Arizona;

5. Charles Roberts, Personnel Manager of Shamrock Dairy, 2228 North Black Canyon, Phoenix, Arizona;

6. H. S. Raymond, P. O. Box 709, Sun City, Arizona, 85351;

7. Paul G. Hunter, 715 West Rancho Drive, Phoenix, Arizona;

8. Robert Dickelman, 6429 East Camino Santo, Phoenix, Arizona;

9. Rose Lopez, 6819 West Northern, Glendale, Arizona, 85301;

10. James Cherry, 1402 West Palmaire Road, Phoenix, Arizona;

11. Dr. George Campbell, 2742 North Indian Ruins Road, Tucson, Arizona, 85715.

VIII

Pursuant to the Court's suggestion, the parties are exploring the possibility of presenting evidence as to the length and characteristics of harvest and preharvest seasons by stipulation. The parties may, therefore, request amendment of this order prior to the trial to add such a stipulation. In the event a stipulation is not reached, Defendants and Intervenors may request that employee information obtained from representa-

tive employers be made a part of the record, and Plaintiffs reserve the right to object to that request.

DATED this 11th day of January, 1977.

Respectfully submitted,
JENNINGS, STROUSS & SALMON

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STIPULATED STATEMENT OF STATUS OF PAST AND PENDING ACTIONS TAKEN IN ACCORDANCE WITH THE AGRICULTURAL EMPLOYMENT RELATIONS ACT FILED JANUARY 21, 1977

1. *D'Arrigo Brothers v. United Farm Workers, et al.*, Pinal County, No. C26803: On April 4, 1973, agricultural employer filed suit to restrict picketing and other Union activities at his ranch. A Temporary Restraining Order was obtained without notice; Section 23-1393(B) of the Act was not relied upon. A preliminary injunction was sought on both the common law

mass-picketing theory and § 23-1385(B)(10) of the Act. After a hearing, a preliminary injunction was entered, modifying the TRO and limiting the number of pickets. The Order does not indicate whether it was based on common law or A.R.S. § 23-1393.

2. On June 12, 1973, *Safeway Stores, Inc. v. United Farm Workers, et al.*, Maricopa County, No. C278338: Retail grocery chain filed suit against the United Farm Workers alleging violations of various provisions of A.R.S. § 23-1385(B) of AAERA for Union's boycott activities conducted at several Safeway stores.

A. On June 22, 1973, the Hon. Charles Hardy issued a preliminary injunction prohibiting the Union and persons acting on its behalf from encouraging persons not to patronize Safeway stores whether by a picket sign, a handbill or oral conversation, but permitting continuation of the Union's boycott of non-UFW Union produce by the same methods. Union activity under A.R.S. § 23-1385(B)(7) was not restricted because of the court's finding that the subsection was unconstitutionally vague. The Order and opinion are attached as Exhibit 2A to this Stipulation.

B. On July 20, 1973, Judge Hardy modified his first Order by limiting the number of pickets at each Safeway store and removing restrictions on communication by individual Union members with individual customers. (Exhibit 2B)

C. On October 3, 1973, the Court modified its second Order at the request of Safeway stores to restate essentially the same terms as the first Order based upon a trespass theory and a second boycott theory. (Exhibit 2C)

D. Safeway then alleged violation of this October 3rd Order and served an Order to Show Cause why the Union and several of its supporters should not be held in contempt. After a hearing of this Order to Show Cause, the Court's Order was again modified on December 13, 1973, clarifying the restrictions on the use of handbills, signs and conversations when communicating with customers. (Exhibit 2D)

E. On February 24, 1974, the parties stipulated to a permanent injunction finalizing the Court's Order of December 13. (Exhibit 2E) Copies of each of the above Orders have already been attached as exhibits to Defendants-Intervenors' Motion to Dismiss of November 28, 1975.

F. *Agricultural Employment Relations Board, Case No. 3-673:* On August 14, 1973, the Agricultural Employment Relations Board filed a charge against the United Farm Workers of America alleging violations of A.R.S. § 23-1385(B)(6)(7) and (8), because of the Union's boycott activities at Safeway stores. The Union moved that the Board dismiss the charge on the grounds that the same dispute had been litigated and decided by the Arizona Superior Court in *Safeway Stores, Inc. v. United Farm Workers,* (Exh. 2A-E supra.) This Motion was denied and the Board scheduled a hearing on this case. The Arizona Superior Court,

on motion of the Union, enjoined the Board from conducting a hearing in the matter on the ground that the Superior Court had assumed exclusive jurisdiction of the dispute in *Safeway Stores v. UFW* and the matter was res judicata. The Superior Court decision was affirmed by the Arizona Court of Appeals in *Agricultural Employment Relations Board v. UFW*, 26 Ariz.App. 336, 548 P.2d 429 (1976).

3. In March of 1974, *Q. V. Distributors, Inc. v. United Farm Workers, et al.*, Maricopa County No. C289128: Wholesale liquor distributor sued United Farm Workers Union alleging violation of A.R.S. § 23-1385(B) and § 23-1323 for Union's boycott of Gallo wines at various Arizona liquor retailers. Court dismissed action for reasons that liquor distributor did not have standing to complain of the alleged violations.

4. *On November 12, 1974, Teamsters' Local 274 filed,* with the Agricultural Employment Relations Board, a petition for a representation election at Bodine Produce Company, Inc., EverKrisp Vegetables, Inc., Tanita Farms and *Cook Produce.* (Full Election Records are attached as Exhibit 4)

A. Pursuant to the Agreement of Consent Election entered into by Teamsters' Local 274 and Cook Produce on November 20, 1974, an election was conducted by the Agricultural Employment Relations Board on November 27, 1974. The result

of this election was in favor of "No Union". Teamsters' Local 274 received 2 votes and "No Union" received 43 votes.

B. Bodine Produce Company, Inc., EverKrisp Vegetables, Inc. and Tanita Farms, challenged the initial determination that they, rather than a particular labor contractor, were the employers of the petitioning persons. A formal hearing was held on November 25, 1974. Between November 25 and December 5, 1974, the Board determined that Bodine Produce Company, Inc., EverKrisp Vegetables, Inc. and Tanita Farms were the employers of the particular persons petitioning for election within the meaning of the Act and ordered further hearings to determine if there was a sufficient showing of interest at each farm to order an election.

C. As a result of the proceedings ordered by the Board, it was determined on December 6, 1974, that there was not a sufficient showing of interest as to Tanita Farms and therefore, the petition for a representation election at Tanita Farms was, therefore, dismissed under A.R.S. § 23-1389(C)(1); and Teamsters' Local 274 withdrew its petitions for representation elections at EverKrisp Vegetables, Inc. and Bodine Produce Company, Inc.

5. On November 22, 1974, Teamsters' Local 274 filed, with the Agricultural Employment Relations Board, a petition for a representation election at Cactus Distributors, Inc. As a result of a hearing on December 3, 1974, and decision of the Agricultural Employment Relations Board on December 4, 1974, the showing of interest submitted by Teamsters' Local

274 in its petition for representation election at Cactus Distributors, Inc., was deemed valid and an election was directed to be conducted on December 17, 1974, pursuant to A.R.S. § 23-1389(D). On December 6, 1974, the Union withdrew its petition for representation election.

6. On December 3, 1974, J. A. Wood Company filed a petition for an election alleging certain primary and secondary picketing activity by the Teamsters' Union which demanded recognition and the renewal of a contract with the company. A hearing was scheduled for December 11, 1974, but not held. The petition was withdrawn on December 17, 1974, by J. A. Wood Company. No election was scheduled or held. (Exhibit 6)

7. *Kennard, et al. v. United Farm Workers, et al.*, Maricopa County, No. C294873: Numerous liquor retailers filed suit against the United Farm Workers and several of its supporters alleging violation of § 23-1385(B) of the AAERA because of the Union's boycott of wines at their establishments. A Temporary Restraining Order was issued without notice. Defendants' later Motion to Quash due to insufficiency of service was granted but new service has not been made.

8. On March 25, 1975, while Teamster Union members were engaging in recognitional picketing, G & S Produce filed with the Agricultural Employment Relations Board a petition for a representation election. A hearing was scheduled for April 1, 1975, but was not held. On March 28, 1975, the petition was withdrawn by G & S Produce. (Exhibit 8)

9. On April 11, 1975, Teamsters' Local 310 filed, with the Agricultural Employment Relations Board, a petition for a representation election at Shamrock Farms. A hearing was scheduled for April 22, 1975. An Agreement for a Consent Election was reached by the parties and was approved by the Board on May 5, 1975. This election was held on May 21, 1975. The Teamsters' Local 310 received 4 votes and "No Union" received 25 votes. (Exhibit 9)

10. On May 23, 1975, Laborers' Local 479 filed, with the Agricultural Employment Relations Board, a petition for a representation election at Olson Dairy. A hearing was held on June 2, 1975. An Agreement for a Consent Election was reached by the parties and approved by the Board at the hearing. This election was held on June 22, 1975. Laborers' Local 479 received 5 votes and "No Union" received 2 votes. (Exhibit 10)

11. *Agricultural Employment Relations Board v.United Farm Workers,* Case Nos.: C2-175, C3-175, C4-175, C5-175, C6-175, C7-175 and C8-175. Seven charges were filed by retail liquor outlets in Tucson, Arizona. After investigation by the Board, it was determined that the evidence supported only five of those charges, and the Board brought actions on those five charges. The complaints charged the Union with certain unfair labor practices in violation of A.R.S. § 23-1385(B)(6) and § 23-1385(B)(7). (Case No. C6-175 was subsequently withdrawn and dismissed due to lack of cooperation and interest by the charging party).

A. The Union moved to dismiss the above described cases on the grounds of stare decisis (see paragraph 2 above) and first amendment violations. A hearing was held on April 17, 1975. The

trial examiner, James Cherry, denied the Union's Motion in a decision dated April 23, 1975, attached hereto as Exhibit 11A.

B. A hearing on the merits was held on May 28, 1975, before Trial Examiner James Cherry. The Union declined to appear contending that the Superior Court had assumed exclusive jurisdiction because of the existence of a class action involving similar allegations which was filed in Pima County Superior Court on May 22, 1975. The class action had been brought by a number of Arizona liquor outlets (including those stores discussed in paragrap 11) seeking to enjoin the Union from continuing certain picket activity. The Union contended that the April 3, 1974, Order of Judge Edward Hughes, Maricopa County Superior Court, referred to in paragraph 2F above, was applicable. The Order is attached as Exhibit 11B. The trial examiner proceeded with the hearing based upon the Board's contention that if there were exclusive jurisdiction anywhere, it lay with the Board because the actions were first filed with the Board; and the contention that Judge Hughes' Order of April 3, 1974, had been stayed and was pending before the Court of Appeals.

C. The Agricultural Employment Relations Board proceeded on the merits in the case and the Union filed a Motion before Hon. Judge Edward Hughes for an Order to Show Cause why the Board should not be held in contempt of his Order of April 3rd. Hearing on the show cause Order was held on July 16, 1975, and the Union's Motion was denied by Order dated July 18, 1975. On

July 9, 1975, the trial examiner, James Cherry, rendered his decision on the merits of the Board's complaints enjoining the Union from engaging in the alleged unfair labor practices. (Exhibit 11C)

D. The Union filed, with the Agricultural Employment Relations Board, exceptions to this decision. (Exhibit 11D) On August 13, 1975, the Board modified the trial examiner's decision. (Exhibit 11E) The final Order of the trial examiner and the Board continued to enforce A.R.S. § 23-1385(B)(6) and (7).

12. *Agricultural Employment Relations Board v. United Farm Workers of America,* Pima County, No. 153789: Upon the complaint of the five Tucson liquor stores referred to in paragraph 11 above, the Agricultural Employment Relations Board filed suit against the United Farm Workers alleging improper activity under A.R.S. § 23-1385(B)(6) and (7) of the AAERA and § 23-1321 for the Union's boycott activities at those stores. The Board obtained a Temporary Restraining Order without notice in that action. After a subsequent hearing, the Hon. Lillian Fisher granted, in part, a preliminary injunction on April 4, 1975, which restricted the communications that could be made to liquor store patrons, regardless of how communicated. (Exhibit 12) The position of the Board's counsel in this case and the Board's case in paragraph 11, supra, was that the stores were secondary employers and A.R.S. § 23-1385(B)(6) prohibited picketing, handbilling and conversations which encouraged persons not to patronize them; but permitted such activity if directed against boycotted products.

13. *Kennard, et al. v. United Farm Workers of America, et al.*, Pima County, No. 154758: Numerous liquor retailers and a liquor distributor filed a class action alleging improper activities under A.R.S. § 23-1385(B) and § 23-1323. A Temporary Restraining Order was obtained without notice which restricted picketing the stores alleged to be in the class. After hearing, the case was dismissed as to the liquor distributor on grounds of res judicata (see para. 3, supra.) and as to several of the retailers because they were not properly in the class, but without prejudice to certain other class members to request injunctive relief in accordance with the Order. The request for a preliminary injunction was denied for the remaining plaintiffs because of insufficient evidence.

14. *Agricultural Employment Relations Board v. Rovey Land and Cattle Company*, May 5, 1975, Case Nos.: C9-575, C10-575, C11-575, C12-575 and C13-575, are actions brought on behalf of five members, or former members, of Civil Rights for Farm Workers, who were formerly employed by the respondent. Generally the complaints allege, inter alia, that respondent interferred with the charging party's rights to join, form or organize a labor organization in violation of A.R.S. § 23-1385(A).

This matter was tried before Douglas Leslie, Professor of Law, Arizona State University. A decision was rendered on March 22, 1976, in part granting and in part denying the claim. The decision is attached as Exhibit 14. The Board affirmed the decision of the trial examiner on May 6, 1976.

15. *Agricultural Employment Relations Board v. Olson Dairy*, June 4, 1975, Case Nos: C14-675 and C15-675, are actions brought on behalf of two former employees of respondents who were discharged when new management took over the operations of the dairy. The charging parties allege, inter alia, that their discharge was due to their Union organization activities with Local 479 of the Laborers' Union in violation of A.R.S. § 23-1385(A).

This matter was tried before Raymond Hayes, Esquire, and was dismissed without prejudice.

16. Charge No. C16-675, June 23, 1975, was filed against Vessey Company of Arizona in Marana, Arizona. The charging party alleged that he was discharged due to his organization of efforts with Teamsters' Local 274. An investigation of this matter found that the charge was not supported by evidence sufficient to warrant further action by the Board. The Board, therefore, issued a Notice of Refusal to Issue a Complaint on September 17, 1975.

17. *Agricultural Employment Relations Board v. Rovey Land and Cattle Company*, Case No. C17-1775, is a suit brought on behalf of Spencer Thomas, a former employee of respondent. Since this matter involves similar issues of fact and law as those expressed in the case referred to in paragraph 14 above, the Board is holding this matter in abeyance awaiting the outcome of the prior action.

18. Charge Nos. C18-775, C19-775, C20-775, C21-775, C22-775, C23-775 and C24-775, were filed against the Barkley Company of Arizona with the Agricultural Employment Relations Board on July 8, 1975, by

Teamsters' Local 274 and former employees of respondent. The charges alleged that some of the employees were discharged for signing Union Authorization Cards which were distributed by Local 274 in an effort to obtain a proper showing of interest, in accordance with A.R.S. § 23-1389(C)(1), in order that a petition for a representation election could be filed with the Agricultural Employment Relations Board pursuant to A.R.S. § 23-1389. Pursuant to an investigation, a stipulation and agreement was entered into between the Board and respondent on October 14, 1975, in accordance with Rule 4-205 of the Rules and Regulations of the Agricultural Employment Relations Board.

19. Charge No. C25-976 was filed against Robert L. Saylor Farms located in Glendale, Arizona. The charging party alleged, inter alia, that Respondent had interferred with his rights to join, form and organize a labor organization. A Temporary Restraining Order was granted by the Hon. Robert Pickrell in the Superior Court of Maricopa County on September 12, 1975, enjoining respondent from discharging and evicting the charging party. Pursuant to an investigation, a stipulation and agreement was entered into by the Board and respondent on September 22, 1975, in accordance with 4-205 of the Rules and Regulations of the Agricultural Employment Relations Board.

20. *Warren Page, d/b/a Page's Market and Page's Western Auto v. United Farm Workers, et al.*, Maricopa County, No. C328259: On February 20, 1976, an action based upon provisions of the AAERA and common law was filed by Page's Market to enjoin boycott activity by the Defendant Union against Page's Market and Page's Western Auto: and a Temporary

Restraining Order was granted by Judge Robert Corcoran, Maricopa County Superior Court. On March 1, 1976, an Unfair Labor Practice complaint was filed with the AAERB by Page. The Board deferred action on the complaint pending disposition by Judge Corcoran. On May 1, 1976, Judge Corcoran issued a preliminary injunction prohibiting secondary boycott picketing on their private property. The Order did not prohibit picketing, placards and other forms of expression specifically relating to boycotted products, so long as not conducted on Page premises.

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EXHIBIT 2A

IN THE SUPERIOR COURT
OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

SAFEWAY STORES, INC.,
a Maryland corporation,
Plaintiff,
vs.
UNITED FARM WORKERS UNION,
a labor organization;
JOHN DOES 1-100,
Defendants.

No. C-278338
MEMORANDUM
OPINION AND
ORDER

Safeway Stores, Inc. (which hereinafter will be referred to as "Safeway") has applied for a preliminary injunction enjoining the defendant United Farm Workers Union (which hereinafter will be referred to as "the Union") and its members or representatives from picketing or handbilling Safeway stores throughout Arizona, from mass picketing, from threatening or committing acts of intimidation of violence against Safeway or its officers, agents or employees or customers, and from trespasses.

In granting or refusing a preliminary injunction this court must make findings of fact and conclusions of law. The statement of facts and the Court's discussion of law as set forth below may be considered as such

findings and conclusions. Of course, counsel for either side may object to them and may request additional findings or conclusions.

STATEMENT OF FACTS

The Union is a labor organization which seeks to represent agricultural employees in collective bargaining with agricultural employers. Lettuce and grape growers in Arizona and California have recognized the International Brotherhood of Teamsters, Chauffeurs, Warehouseman and Helpers of America as the bargaining agent for their agricultural employees. The Union contends that such recognition is invalid because the employees were never given any choice in the matter and that if elections were held on the issue the overwhelming majority of farm workers would select the Union as their bargaining agent.

This Court can probably take judicial notice that Safeway is one of the one hundred largest corporations in the United States. It operates retail supermarkets throughout the United States. It purchases fruits and vegetables directly from growers or growers' associations. Presently about 81% of the lettuce purchased by Safeway is purchased from growers who recognize the Teamsters as bargaining agent, about 9% is purchased from growers who have recognized the Union and the remaining 10% is purchased from growers who do not recognize either union.

As means of forcing growers of grapes and lettuce to recognize it as bargaining agent for agricultural employees the Union has organized a campaign to persuade the public to buy only grapes and lettuce produced by growers who have contracts with it and to

boycott grapes and lettuce produced by growers who do not have contracts with it. It has also organized a nationwide campaign to induce the buying public to refuse to patronize Safeway so long as it sells grapes and lettuce produced by growers who do not recoqnize the Union as bargaining agent for their agricultural employees.

On May 15, 1973, while Safeway was having the grand opening of a new store at 4711 East Grant Road in Tucson, a number of the Union's representatives appeared and picketed in the traditional sense by patrolling in front of the store with placards bearing language such as "Don't Buy Safeway," "Safeway Oppresses Farm Workers," and "Safeway Hates Farm Workers." A handbill urging persons to "boycott non-union and teamster table grapes — head lettuce" was also distributed. At one time there were as many as thirteen persons picketing. Since that time, there never have been so many Union representatives at the premises of any Safeway store. The number has varied from two to seven persons.

During the first week at the Grant Road store, the Union's activities were confined to patrolling with placards and distributing handbills. Union representatives then commenced going into the parking lot to talk directly to potential customers. Their tactic was to attempt to talk to potential customers before they got out of their vehicles, hoping to persuade them not to patronize Safeway while it was easier for them to leave the premises.

The Union extended its activities to three other stores in Tucson, one in Phoenix and one in Tempe. However, at these latter five stores there has been no patrolling with placards — only distribution of handbills and vocal urging of potential customers not to patronize Safeway.

A number of handbills have been used. One is a reprint of an article in *Newsweek* regarding the dispute by the Union on one side and grape and lettuce growers and Teamsters on the other. Handprinted on the reprint are "Workers say NO on Safeway" and "Safeway Sells Teamster Lettuce." This handbill could be interpreted as urging the public not to patronize Safeway.

None of the other handbills can be so interpreted. In one way or another they urge the public to buy only grapes and lettuce bearing the Union's label and to boycott "scab", "Non UFW Union" or "non-union lettuce and grapes." One handbill informs the public that the Union has asked Safeway to "buy only United Farm Workers lettuce and grapes," and urges a boycott of such products. Nothing in the handbill suggests a boycott of Safeway.

However, the Union freely acknowledges that it is organizing a nationwide campaign to urge the public not to patronize Safeway so long as it purchases grapes and lettuce from growers who do not have contracts with the Union. Representatives of the Union have called on Safeway's vice president for the Arizona division and its district manager in Tucson to inform them

that the Union proposed to force Safeway to bring economic pressure on growers to compel them to bargain with the Union.

The Union eschews violence. Its representatives are urged to avoid provocative conduct which will turn members of the public against them. Their activities have not been accompanied by any vile, abusive or threatening language, by attempts to hinder or obstruct persons from entering Safeway stores or by any other coercive or intimidating conduct.

Five of the six stores in question are in shopping centers in which there are also other stores and in which Safeway is a lessee. There was no evidence that the activities of the Union on these premises were without license from the lessors. The sixth store, at 1983 East Broadway in Tucson, is a so-called "free standing" store. Safeway is the owner of the premises and it is the only occupant of the premises. At that store, representatives of the United Farm Workers have been requested not to engage in their activities on the premises but to confine themselves to the public sidewalks abutting the premises.

THE CONTENTIONS OF THE PARTIES

Safeway contends that the activities of the representatives of the United Farm Workers Union constitute picketing in furtherance of a secondary boycott in violation of A.R.S. 23-1323; unfair labor practices in violation of A.R.S. 23-1385B; acts of trespass; and a combination in restraint of trade in violation of A.R.S. 44-1401.

The Union concedes that the carrying of placards or signs in front of a Safeway store would be picketing which could be restrained. However, it contends that the distribution of handbills and the talking to potential customers of Safeway are free speech activities which are protected from injunction by constitutional guarantees of free speech.

LEGAL CONCLUSIONS

1. Secondary Boycott

At the conclusion of the hearing on Safeway's petition for injunction, the Court remarked from the bench that it did not think that the activities of the Union's representatives constituted a secondary boycott as the term is defined by A.R.S. 23-1321 and which is outlawed by A.R.S. 23-1323. One of the acts prohibited in furtherance of a secondary boycott is picketing and the court did not feel at the time that picketing extended to the distribution of handbills or to talking to potential customers. The opinion expressed by the Court was erroneous. The term "picketing" embraces more than mere patrolling with placards. Picketing is defined at 48 Am. Jur. 2d, Labor Relations, Sec. 1382, p. 860 as:

> "... walking or patrolling in the vicinity of a place of business involved in a labor dispute and, by word of mouth, banner or placard, undertaking to inform the public concerning the dispute ... picketing may be intended to persuade workers to quit their jobs or not to seek employment, or to advise members of the public of the labor dispute and influence them to withhold their patronage."

A number of courts have held that the distribution of handbills constitutes picketing. *Roywood Corporation v. Radio Broadcast Technicians Local U. Number 1264,* 290 Fed. Supp. 1008 (SD Ala., 1968), *Potter v. Plubers and Pipefitters Local Union Number 142,* 192 Fed. Supp. 641 (WD Tex., 1960), *Jones v. State,* 18 S.E. 2d 844 (Ga., 1942)

The defendants argue that the Supreme Court of the United States made a distinction between "picketing" and "handbilling" in *NLRB v. Fruit and Vegetable Packers Warehousemen,* 377 U.S. 58, 12 Law Ed. 2d 128, 84 Sup. Ct. 1063. However, that case simply involved the construction of Section 8(b)(4) of the National Labor Relations Act, which differentiates between "picketing" and "publicity." The Supreme court did not hold that handbilling had a constitutionally more favored status than carrying placards.

Prohibiting picketing to enforce a secondary boycott, an activity declared illegal by the state, is not an unconstitutional impairment of freedom of speech. See *Baldwin v. Arizona Flame Restaurant,* 82 Ariz. 385, 313 P. 2d 759 (1957)

The Court concludes that the defendant Union is guilty of engaging in a secondary boycott by picketing, which includes not only patrolling with placards but also distributing handbills and vocally urging persons not to patronize Safeway.

2. Unfair Labor Practices

A.R.S. Sec. 23-1385B of the Agricultural Employment Relations Act makes certain activities of a labor organization or its agents unfair labor practices. Safeway contends that the defendants have been guilty of a number of these unfair labor practices.

Subsection 7 makes it an unfair labor practice

> "To induce or encourage or threaten, restrain or coerce any secondary employer or any executive or management employee of any secondary employer to make a management decision not to handle . . . sell or distribute any agricultural commodity of an agricultural employer with whom a labor dispute exists."

This provision is plainly unconstitutional. Any public statement by the Union of its dispute with the growers could conceivably induce or encourage Safeway not to sell the growers' products. Enforcement of Subsection 7 would serve to completely muzzle the Union.

In holding similar language to be unconstitutional, the California Supreme Court stated the applicable rule in *Ex Parte Blaney*, 184 P. 2d 893, 897 (1947):

> ". . . Under that provision should a group of employees or a union merely agree to give publicity to their disputes with their employers by radio or newspaper, if that agreement and publicity results in persuading the employees of some other employer to withhold services from their employer an injunction will ie. (sic) In other words their freedom to publicize their labor disputes or even to agree to do so is penalized . . . The inducement or persuasion to refrain from dealing may be accomplished merely by advising the dealer of the controversy and requesting him to refrain from

> dealing, a matter beyond doubt within the realm of the right of free speech. Merely because the object, the intermediate object (the main objective being to correct a grievance against the employer with whom the dispute exists), is to induce third persons (the dealers) to assist in exerting the economic pressure does not create an unlawful aim. Nor is the communication of the facts of the existence of the dispute to them (the dealers) and persuading them to withhold their business, an unlawful means of furthering the campaign against the employer with whom the controversy exists. A statute so broadly and loosely drawn — which places it within the power of the court to grant injunctive relief which by its terms my be used to strike down the right to freedom of speech — is a prior restraint upon that right. . . ."

That the Arizona Legislature did not intend that Subsection 7 would have such a sweeping effect is indicated by the language of A.R.S. 23-1325C:

> "The expressing of any views, argument, opinion or the making of any statement, including expressions intended to influence the outcome of an organizing campaign (or) a bargaining controversy . . . or the dissemination of such views . . . shall not constitute or be evidence of an unfair labor practice. . . .

Subsection 7 is so vague as to what the Legislature intended to be an unfair labor practice that it must be held to be unconstitutional.

It should be emphasized that the Court's conclusion that Subsection 7 is unconstitutional does not invalidate the other sections of the act.

Safeway contends that the Union is also in violation of Subsection 8 of A.R.S. 23-1385B because its publicity regarding its dispute with growers does not specifically name the agricultural employers with whom the labor union has a primary dispute. The Union publicity has urged the public to purchase only grapes and lettuce bearing the union seal or has urged the public not to buy lettuce and grapes produced by growers who do not have contracts with the Union. The Court concludes that the Union's publicity is a sufficient compliance with Subsection 8.

Subsection 9 makes it an unfair labor practice to "restrain, coerce or threaten an ultimate consumer to prevent him from purchasing, consuming or using such agricultural products." The Court concludes that none of the activities of the Union fall within the meaning of the terms "restrain, coerce or threaten."

Subsection 12 makes it an unfair labor practice to boycott

> "Any agricultural employer when the objective is to induce, encourage, force or require an agricultural employer to recognize or bargain with the labor organization . . . unless such labor organization is currently certified as a representative of such employees . . . where the agricultural employer has lawfully recognized in accordance with this article any other labor organizations. . . ."

There was no evidence presented that the growers had lawfully recognized the Teamsters in accordance with the provisions of the Agricultural Employment Relations Act.

Subsection 6 makes it an unfair labor practice to engage in a secondary boycott as defined in A.R.S. Section 23-1321. The Court has already concluded that the defendants have been guilty of engaging in a secondary boycott. It further concludes that they have not unlawfully engaged in any other unfair labor practice set forth in A.R.S. 23-1385B.

3. Trespasses

Safeway contends that the Union should be enjoined because it has been guilty of trespasses. However, in five of the six stores at which activities have taken place, Safeway was not the owner of the premises but a lessee and there were other tenants on the premises. There was no evidence that the owner of the premises had in any way objected to the activities by the Farm Workers Union. In *Amalgamated Food Employees v. Logan Valley Plaza*, 319 U.S. 308, 20 Law Ed. 2d 603 (1968), picketing to publicize a labor dispute was held not to be a trespass where it was conducted on a shopping center's premises which had taken the characteristic of a public business district. However, in *Central Hardware Co. v. NLRB*, _____ U.S. _____, 33 Law Ed. 2d 122 (1972) and *Lloyd Corporation v. Tanner*, _____ U.S. _____, 33 Law Ed. 2d 131 (1972), the Supreme Court of the United States held that there was no right to picket on private property to publicize a labor dispute. Safeway's store at 1938 East Broadway in Tucson is on property owned by Safeway and the activities of the Union's representatives on this property constitute a trespass.

4. Combination Restraint of Trade

The Court concludes that the activities of the representatives of the United Farm Workers Union are not a combination in restraint of trade within the meaning of A.R.S. 44-1401 to -1408.

ORDER FOR INJUNCTION

IT IS ORDERED that the defendant United Farm Workers Union, its officers, agents, servants, employees and representatives and all persons in active concert or participation with them are hereby, until further order of the court, restrained and enjoined as follows:

a. From conducting a secondary boycott of Safeway stores throughout Arizona by picketing within or in front of such stores, in parking lots used by Safeway's customers or in the immediate vicinity of such stores.

b. From trespassing on the premises of 1938 East Broadway, Tucson, Arizona, or any other free standing Safeway store for the purpose of picketing.

IT IS FURTHER ORDERED denying the application of Safeway stores for an injunction enjoining the defendants from picketing Safeway stores (other than free standing stores such as the store at 1938 Broadway, Tucson, Arizona) for the purpose of publicizing the Union's dispute with grape and lettuce growers and urging persons not to purchase grapes or lettuce produced by growers who do not have contracts with United Farm Workers Union.

IT IS FURTHER ORDERED denying Safeway stores application for an injunction enjoining defendants from mass picketing or from threatening or committing acts of intimidation or violence against

plaintiff's property or its officers, agents, employees or against other desiring to do business with plaintiff, there being no evidence presented to justify such an injunction.

DATED this 22nd day of June, 1973.

Judge of the Superior Court

Copies of the foregoing mailed to:
Mr. Frederick K. Steiner, Jr.
Mr. James Rutkowski

EXHIBIT 2B

IN THE SUPERIOR COURT
OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

SAFEWAY STORES, INC., a Maryland corporation, *Plaintiff,* vs. UNITED FARM WORKERS UNION, a labor organization; JOHN DOES 1 - 100, *Defendants.*	C-278338 ORDER MODIFYING MEMORANDUM AND ORDER OF JUNE 22, 1973

After hearing, and pursuant to the Court's ruling, IT IS ORDERED:

1. The motion of Plaintiff to punish for contempt and to enlarge injunction is withdrawn, by stipulation of the parties.

2. The Court's Memorandum of Opinion and Order of June 22, 1973 is modified as follows:

(a) The final paragraph of the Court's Legal Conclusion 1. is modified by changing the period at the end of the sentance to a comma and by adding the phrase "except on a one-to-one basis."

(b) The Court's Order for Injunction is modified as follows:

(i) In Paragraph "b" by changing the period to a comma and by adding the phrase "or at the premises controlled by Safeway at 827 East Main, Mesa and at 5340 West Glendale, Glendale, Arizona."

(ii) By adding the following Paragraph "c":

"c. By picketing with no more than 15 persons at any one Safeway location, no more than five of which shall be within the parking lot at any one time."

(iii) By adding the following Paragraph "d":

"d. Plaintiff's bond in this Preliminary Injunction is set at $1,000."

DONE IN OPEN COURT this 20th day of July, 1973.

_____
Judge of the Superior Court

APPROVED AS TO FORM:

_____
Frederick K. Steiner, Jr.
Attorney for Plaintiff

_____
James Rutkowski
Attorney for Defendants

EXHIBIT 2C

IN THE SUPERIOR COURT
OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

SAFEWAY STORES, INC., a Maryland corporation, *Plaintiff,* vs. UNITED FARM WORKERS UNION, a labor organization; JOHN DOES 1-100, *Defendants.*	NO. C-278338 AMENDED MEMORANDUM OPINION AND ORDER

On June 22, 1973, the court handed down its memorandum opinion and order in which it enjoined the defendants from conducting a secondary boycott of Safeway Stores by picketing within or in front of such stores, and parking lots used by Safeway's customers or in the immediate vicinity of such stores; and from trespassing on the premises of free standing Safeway Stores for the purpose of picketing. The court also denied Safeway's application for an injunction restraining the defendants from picketing Safeway Stores (other than free standing stores) for the purposes of publicizing the Union's dispute with grape and lettuce growers and urging persons not to purchase grapes or lettuce produced by growers who did

not have contracts with the Union. The court's memorandum opinion included a conclusion that the defendant Union had been guilty of engaging in a secondary boycott by picketing by patroling with placards, distributing handbills and vocally urging persons not to patronize Safeway. On July 25, 1973, in granting a motion of defendants to amend, the court added to its conclusion regarding a secondary boycott an exclusion, "except on a one to one basis".

The June 22nd memorandum opinion and order was based upon evidence which had been received by the court during a hearing of Safeway's application for a temporary injunction. Part of that evidence was that in some instances the Safeway owned the property upon which the store is located, the so-called free standing store, and in other instances it was a lessee in a shopping center in which there were other businesses leasing their premises from a common owner. The court noted (at Page 8), "There was no evidence that the owner of the premises had in any way objected to the activities by the Farm Workers Union." It now appears that with respect to many, if not all such shopping centers, Safeway is the lessee of the entire premises from the fee simple owner and Safeway subleases space to other businesses and retains control of the parking lots. It now claims that it should be entitled to treat such premises as if they were free standing and thus exclude all picketing.

The controlling principles of law are found in *Amalgamated Food Employees Union v. Logan Valley Plaza,* 391 U. S. 308, 20 L. Ed. 2d 603, 88 Sup. Ct. 1601 (1968) and *Lloyd Corporation v. Tanner,* 407 U.S. 551, 33 L. Ed. 2d 131, 92 Sup. Ct. 2219 (1972). In

Logan Valley, Weis Markets was a tenant in a large shopping center in which it operated a supermarket and employed a wholly non-union staff. When the union began picketing Weis, carrying signs stating that it was a non-union market and landlord and the tenant obtained an injunction against the picketing. In overruling the state courts, the Supreme Court of the United States held that the shopping center was open to the public to the same extent as the commercial center of a normal town and that state trespass laws could not be invoked to exclude picketing.

In *Lloyd* the Supreme Court did not overrule *Logan Valley* but severely restricted its application. It was held that *Logan Valley* only upheld picketing which was directly related in its purpose to the use to which the shopping center property was being put and where the store was so located that no other reasonable opportunity for the pickets to convey their message was available. The court also held in *Lloyd* that the rights of private property owners are entitled to be respected and protected; that a trespasser or an invited guest has no general right of free speech on private property "used non-discriminatorily for private purposes only" and that one who operates a business which is open to the public and provides parking facilities does not dedicate his property to public use so as to entitle persons to exercise first amendment rights thereon.

Significantly, the court in *Lloyd* found no difference in principle between a free standing store and one located in a shopping center.

A careful reconsideration of *Lloyd* persuades the court that some of its conclusions and orders in its June 22nd memorandum opinion and order were erroneous and require correction:

1. The court concludes that the activities of the defendants in urging the public not to purchase grapes and lettuce which have been supplied to Safeway by growers who do not have contracts with the defendant union are directly related to the purpose to which the Safeway Stores property are being put. The court also finds that it would be unreasonable to require the defendants to limit their picketing to the entrances to the parking lots surrounding Safeway Stores. Passing out handbills or otherwise attempting to communicate the Union's position at such entrances would, in the court's opinion, cause real traffic hazards.

2. The court adheres to its original conclusion that approaching patrons of Safeway in its parking lots on a one to one basis and urging them not to patronize Safeway does not constitute a secondary boycott by picketing.

3. However, such activity cannot be held to be directly related in its purpose to the use to which the Safeway property is being put; it is only indirectly related thereto. Such activity is directly related in its purpose to coerce Safeway into refusing to buy non-union lettuce and grapes, an activity which does not take place at the Safeway Stores but at the place where such items are purchased by Safeway.

4. Thus the court concludes that Safeway or the fee simple owner of any property upon which a Safeway Store and its parking lots are located may prohibit the defendants from approaching persons on their property on a one to one basis for the purpose of inducing such persons not to patronize Safeway.

IT IS ORDERED setting aside the court's order of June 22, 1973, as modified.

IT IS FURTHER ORDERED that the defendant United Farm Workers Union, its officers, agents, servants, employees and representatives and all persons in active concert or participation with them are hereby, until further order of the court, restrained and enjoined as follows:

A. From conducting a secondary boycott of Safeway Stores throughout Arizona by picketing within or in front of such stores, in parking lots used by Safeway's customers or in the immediate vicinity of such stores.

B. From trespassing on premises owned or controlled by Safeway for the purpose of inducing persons not to patronize Safeway Stores.

IT IS FURTHER ORDERED denying the application of Safeway for an injunction enjoining the defendants from picketing Safeway Stores for the purpose of publicizing the defendant Union's dispute with grape and lettuce growers and urging persons not to purchase grapes or lettuce produced by growers who do not have contracts with the United Farm Workers Union.

IT IS FURTHER ORDERED limiting the number of persons who may picket at any one Safeway location to not more than fifteen (15) persons, no more than five (5) of whom may patrol within the parking lot at any one time.

IT IS FURTHER ORDERED continuing plaintiff's bond for preliminary injunction in effect in the sum of $1,000.

DATED this 11th day of October, 1973.

_____
Judge of the Superior Court

Copies of the foregoing mailed to:

Mr. Frederick K. Steiner, Jr.
Mr. James Rutkowski

EXHIBIT 2D

THE SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

SAFEWAY STORES, INC., A Maryland Corporation, *Plaintiff* v. UNITED FARM WORKERS UNION, a labor organization, DAVID KOEHLER, PATRICK BONNER, NANCY GALLEN MCKOVIAK, GERALD ROBINNETTE, ANGELA LOCKE, JOHN DOES 1-100, *Defendants*	CIV. NO. 278338 FINDINGS OF FACT, CONCLUSIONS OF LAW, AND PRELIMINARY INJUNCTION

FINDINGS OF FACT

1. The defendant United Farm Workers Union (hereinafter referred to as Union) is a labor organization which seeks to represent agricultural employees in collective bargaining with agricultural employers.

2. The defendants, David Koehler, Patrick Bonner, Nancy Gallen McKoviak, Gerald Robinnette, and Angela Locke, are agents, employees or representatives of the Union.

3. Plaintiff, Safeway Stores, Inc., a Maryland corporation, owns or controls several stores in the state of Arizona from which groceries, including lettuce and grapes, are sold to the public. (The plaintiff will hereinafter be referred to as Safeway).

4. As of June 22, 1973, lettuce and grape growers in Arizona and California have recognized the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, as the bargaining agent for their agricultural employees. The Union contends that such recognition is invalid because the employees were never given any choice in the matter and if elections were held on the issue the overwhelming majority of farmworkers would select the Union as their bargaining agent.

5. Safeway purchases fruits and vegetables directly from growers or growers associations. Presently about 81% of the lettuce purchased by Safeway is purchased from growers who recognize the Teamsters as bargaining Agent, about 9% is purchased from growers who recognize the Union and the remaining 10% is purchased from growers who do not recognize either union.

6. As a means of forcing growers of grapes and lettuce to recognize it as bargaining agent for agricultural employees, the Union has organized a campaign to persuade the public to buy only grapes and lettuce produced by growers who have contracts with it and to boycott grapes and lettuce produced by growers who do not have contracts with it. It has also organized a nationwide campaign to induce the public to refuse to

patronize Safeway so long as it sells grapes and lettuce produced by growers who do not recognize the Union as bargaining agent for their agricultural employees.

7. The Union has engaged in a secondary boycott by picketing, which included not only patrolling with placards but also distributing handbills and vocally, in unison, urging persons not to patronize Safeway.

8. The Union intends to conduct a secondary boycott by picketing Safeway locations.

9. On or about October 20, 1973, the Union, its agents, employees and representatives, and persons in active concert or participation with the Union, assembled at the Safeway store at 24th Street and East Van Buren in Phoenix, Arizona. During this assembly there were approximately 120 people affiliated with the Union who stood or patrolled on the public sidewalk or property not controlled by Safeway.

10. At the Safeway store at 24th Street and East Van Buren, on or about October 20, 1973, and on other occasions prior to the issuance of this Order, the Union, its agents, employees and representatives, or persons in active concert or participation with the Union, have carried placards and distributed handbills, urging the publicnot to purchase grapes or lettuce from Safeway stores. Some of the persons affiliated with the Union have carried placards and distributed handbills which made no specific reference to grapes or lettuce and some of the participants have carried a flag emblematic of the Union.

11. It is the policy of the Union to avoid violence and to seek to persuade the public by peaceful means not to purchase grapes and lettuce from Safeway. However, there is evidence in the record that the Union's policy or instructions have not always been strictly followed by persons picketing at the request of Union representatives.

12. On or about November 15, 1973, there were more than fifteen pickets on Safeway locations in Maricopa County.

13. There is unrebutted evidence in the record to the effect that occasionally customers of Safeway have had difficulty in getting out of their automobiles in Safeway parking lots because of the acts of the pickets and, in isolated instances, that threatening language has been used by the pickets towards customers of Safeway.

14. The Safeway stores in Arizona are either free standing stores or are located in shopping centers. With respect to many, if not all such shopping centers, Safeway is the lessee of the entire premises from the fee simple owner and Safeway subleases space to other businesses and retains control of the parking lots. in the vicinity of some of the Safeway stores, there are public sidewalks and other areas which are neither owned or controlled by Safeway. If the defendants try to distribute handbills or otherwise communicate with Safeway customers as these customers enter the Safeway parking lots and premises from public streets, they would create a traffic hazard.

15. The picketing of the Safeway premises by the defendants has a direct relation to the purpose for which Safeway stores and parking lots were built and are being used.

16. One-to-one communication by the defendants in Safeway parking lots has a direct relation to the purpose for which Safeway stores and parking lots were built and are being used.

17. The defendant Union would be deprived of all reasonable opportunity to convey its message to the patrons of the Safeway stores if they are denied all access to the Safeway locations.

CONCLUSIONS OF LAW

1. The plaintiff Safeway is entitled to a preliminary injunction restraining the defendants from conducting a secondary boycott at Safeway stores throughout Arizona by picketing within or in front of such stores, in Safeway parking lots adjacent to such stores, or on premises adjacent to the stores, which premises are owned or controlled by Safeway.

2. In the context of this lawsuit, secondary boycott by picketing includes using terms such as "Don't shop Safeway" or "Boycott Safeway" or other language generally urging the public not to patronize Safeway, by means of placards, signs, flags, handbills or chanting in unison by persons engaged in picketing. Secondary boycott by picketing does not include (1) urging Safeway customers not to purchase grapes or lettuce produced by growers who do not have contracts with the United Farm Workers Union or (2) communication

by individuals lawfully on Safeway premises who are engaged in one-to-one communication with customers of Safeway.

3. Safeway is entitled to a preliminary injunction against the defendants, limiting the number of persons who may enter premises owned or controlled by Safeway for the purpose of engaging in one-to-one communication with its customers.

4. The plaintiff Safeway is entitled to a preliminary injunction restraining the defendants from using any vile, abusive or threatening language towards Safeway customers or from attempts to hinder or obstruct persons from entering the Safeway premises or Safeway stores.

5. The plaintiff Safeway is not entitled to a preliminary injunction at the present time, restraining the defendants from engaging in picketing on premises near Safeway stores, which premises are neither owned nor controlled by the plaintiff Safeway.

PRELIMINARY INJUNCTION

IT IS ORDERED that the defendant, United Farm Workers Union, its officers, agents, servants, employees and representatives, including the defendants, David Koehler, Patrick Bonner, Nancy Gallen McKoviak, Gerald Robinnette and Angela Locke, and all persons in active concert or participation with them, are hereby, until further Order of the Court, restrained and enjoined as follows:

1. From conducting a secondary boycott on Safeway stores throughout Arizona by picketing within or in front of any Safeway store, in Safeway parking lots adjacent to such stores, or on premises adjacent to the

stores, which premises are owned or controlled by Safeway. This injunction does not restrain picketing by use of placards, handbills or other means of expression which specifically relate to lettuce and grapes produced by growers who do not have contracts with the United Farm Workers Union as long as such picketing shall be conducted by not more than fifteen people at any one Safeway location whose activities are reasonably regulated by the defendants, as set forth in this Order, as follows:

(a) The fifteen pickets permitted at any one Safeway location by this Order shall limit their patrolling to the sidewalks or walkways immediately adjacent to and outside the structure housing the Safeway store. At no time shall such picketing interfere with the right of anyone to enter or leave the Safeway store through any public entrance or exit; in this connection, Safeway may paint lines or otherwise clearly delineate a semi-circular area described by a radius of fifteen feet from the center of each public entrance and exit, within which delineated area no picketing shall be conducted, nor shall there be any other contact with Safeway customers within this delineated area.

(b) Five of the fifteen pickets at any one location may patrol in the parking lot of each Safeway location and may communicate on a one-to-one basis with Safeway customers.

(c) At no time shall any picket unreasonably interfere with any person's attempt to get into or out of his or her automobile in the parking lot.

(d) The placards, signs, flags or other materials being carried by the pickets on the premises of Safeway may contain words urging the public not to purchase grapes and lettuce which have been supplied to Safeway by growers who do not have contracts with the United Farm Workers Union, but the entire message shall be carried in print or type of equal size and visibility. These placards, signs and other materials shall not say "Don't shop Safeway" or "Boycott Safeway" or words to that effect, unless such words refer to grapes and lettuce and the reference to these products is in print or type of equal size and visibility as the words urging the public not to patronize Safeway.

(e) Any handbill or other literature distributed by the pickets while on Safeway premises shall not use the words "Don't shop Safeway" or "Boycott Safeway" or the equivalent words, unless in close conjunction with the use of those words there is a reference in the same handbill or literature to grapes and lettuce, and such reference shall be of equal type, size and visibility as the words "Boycott Safeway" or "Don't shop Safeway" or the equivalent words.

(f) The automobiles or other vehicles of the fifteen persons engaged in the picketing and any other person at the Safeway location at the request of the defendants, shall not be parked in the Safeway parking lots.

2. From interferring with the movement into and out of Safeway premises by any person or persons by means of picketing, patrolling or demonstrating on public property, or property controlled by persons

other than Safeway, which properties are adjacent to Safeway locations.

3. From entering or coming upon the Safeway premises or premises owned or controlled by Safeway, except that fifteen persons may enter or come upon the premises for the purpose of engaging in the picketing permitted by this Preliminary Injunction, and five of those fifteen persons may patrol in the Safeway parking lots in order to engage in one-to-one communication with Safeway customers.

4. From using any vile, abusive or threatening language towards Safeway customers or attempting to hinder or obstruct persons from entering the Safeway premises or Safeway stores from anywhere, including public streets, public sidewalks or other areas adjacent to the Safeway location.

5. From blocking or otherwise interferring with plaintiff's use of any entrances to its stores, which entrances are used primarily for employees or making deliveries.

6. The bond in the sum of $1,000.000 previously deposited by the Plaintiff with the Clerk of this Court, shall be the security for this Preliminary Injunction. The bond shall be for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained.

It is the intention of the Court to obtain a Spanish translation of this Preliminary Injunction. This translation will be sent to counsel for the defendants. Upon its receipt the defendants shall deliver a copy of this Preliminary Injunction in English and in Spanish to

everyone in active concert or participation with them in the picketing or in other demonstrations at the Safeway locations.

DATED this 13th day of December, 1973.

Jeremy E. Butler
Judge Pro tem of the Superior Court

EXHIBIT 2E

IN THE SUPERIOR COURT OF MARICOPA COUNTY, ARIZONA

SAFEWAY STORES, INC., a Maryland corporation, *Plaintiff,* v. UNITED FARM WORKERS UNION, a Labor organization, et. al. *Defendants.*	CIV - 278338 STIPULATION AND ORDER GRANTING PERMANENT INJUNCTION

Plaintiff and defendants, through their undersigned counsel, hereby stipulate and agree that the preliminary injunction issued by this Court in its Findings of

Fact, Conclusions of Law, and Preliminary Injunction dated December 13, 1973, be made permanent and binding upon the parties to this action.

DATED this 25th day of February, 1974.

SNELL & WILMER
Frederick K. Steiner, Jr.
3100 Valley Center
Phoenix, AZ 85073
Attorneys for Plaintiff

Bruce Meyerson
P. O. Box 1621
Phoenix, AZ 85001
Attorney for Defendants

ORDER GRANTING PERMANENT INJUNCTION

Upon consideration of the Stipulation submitted jointly by the plaintiff and the defendants in the above-captioned matter, and it appearing to the Court that:

Plaintiff commenced this action against defendants praying for an injunction requiring them to refrain from certain actions enumerated in plaintiff's Complaint, and

Full hearings were held upon the pleadings and motions of the parties, pursuant to which the Court issued a series of Orders granting and modifying permanent injunctions, the last such Order being issued December 13, 1973, and

Plaintiff has deposited satisfactory bond with the Court,

IT IS ORDERED that the defendant, United Farm Workers Union, its officers, agents, servants, employees and representatives, including the defendants, David Koehler, Patrick Bonner, Nancy Gallen

McKoviak, Gerald Robinnette and Angela Locke, and all persons in active concert or participation with them, are hereby, until further Order of the Court, restrained and enjoined as follows:

1. From conducting a secondary boycott on Safeway stores throughout Arizona by picketing within or in front of any Safeway store, in Safeway parking lots adjacent to such stores, or on premises adjacent to the stores, which premises are owned or controlled by Safeway. This injunction does not restrain picketing by use of placards, handbills or other means of expression which specifically relate to lettuce and grapes produced by growers who do not have contracts with the United Farm Workers Union as long as such picketing shall be conducted by not more than fifteen people at any one Safeway location whose activities are reasonably regulated by the defendants, as set forth in this Order, as follows:

(a) The fifteen pickets permitted at any one Safeway location by this Order shall limit their patrolling to the sidewalks or walkways immediately adjacent to and outside the structure housing the Safeway store. At no time shall such picketing interfere with the right of anyone to enter or leave the Safeway store through any public entrance or exit; in this connection, Safeway may paint lines or otherwise clearly delineate a semi-circular area described by a radius of fifteen feet from the center of each public entrance and exit, within which delineated area no picketing shall be conducted, nor shall there be any other contact with Safeway customers within this delineated area.

(b) Five of the fifteen pickets at any one location may patrol in the parking lot of each Safeway location and may communicate on a one-to-one basis with Safeway customers.

(c) At no time shall any picket unreasonably interfere with any person's attempt to get into or out of his or her automobile in the parking lot.

(d) The placards, signs, flags or other materials being carried by the pickets on the premises of Safeway may contain words urging the public not to purchase grapes and lettuce which have been supplied to Safeway by growers who do not have contracts with the United Farm Workers Union, but the entire message shall be carried in print or type of equal size and visability. These placards, signs, and other materials shall not say "Don't shop Safeway" or "Boycott Safeway" or words to that effect, unless such words refer to grapes and lettuce and the reference to these products is in print or type of equal size and visibility as the words urging the public not to patronize Safeway.

(e) Any handbill or other literature distributed by the pickets while on Safeway premises shall not use the words "Don't shop Safeway" or "Boycott Safeway" or the equivalent words, unless in close conjunction with the use of those words there is a reference in the same handbill or literature to grapes and lettuce, and such reference shall be of equal type, size and visibility as the words "Boycott Safeway" or "Don't shop Safeway" or the equivalent words.

(f) The automobiles or other vehicles of the fifteen persons engaged in the picketing and any other person at the Safeway location at the request of the defendants, shall not be parked in the Safeway parking lots.

2. From interferring with the movement into and out of Safeway premises by any person or persons by means of picketing, patrolling or demonstrating on public property, or property controlled by persons other than Safeway, which properties are adjacent to Safeway locations.

3. From entering or coming upon the Safeway premises or premises owned or controlled by Safeway, except that fifteen persons may enter or come upon the premises for the purpose of engaging in the picketing permitted by this Permanent Injunction, and five of those fifteen persons may patrol in the Safeway parking lots in order to engage in one-to-one communication with Safeway customers.

4. From using any vile, abusive or threatening language towards Safeway customers or attempting to hinder or obstruct persons from entering the Safeway premises or Safeway stores from anywhere, including public streets, public sidewalks or other areas adjacent to the Safeway locations.

5. From blocking or otherwise interferring with plaintiff's use of any entrances to its stores, which entrances are used primarily for employees or making deliveries.

6. The bond in the sum of $1,000,000 previously deposited by the Plaintiff with the Clerk of this Court, shall be the security for this Permanent Injunction. The bond shall be for the payment of such costs and

damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained.

7. The Findings of Fact and Conclusions of Law rendered by this Court dated June 22, 1973 and December 12 and 13, 1973 are incorporated herein by this reference, and the law governing the terms of this Permanent Injunction is declared to be set forth in the above Conclusions of Law insofar as those Conclusions have not been modified by any subsequent orders of this Court.

DONE IN OPEN COURT this 27th day of February, 1974.

_____

Judge of the Superior Court

EXHIBIT 4

[Letterhead of Jennings, Strouss & Salmon]

November 20, 1974

Agricultural Employment Relations Board
1645 West Jefferson, 4th Floor
Phoenix, Arizona 85007

ATTENTION: Mr. Robert Dickelman,
General Counsel

Re: Petitions for Recognition

Dear Mr. Dickelman:

This is to formally advise you that this firm represents the following employers, all of whom are the subject of petitions filed by the International Brother-

hood of Teamsters, Chauffeurs & Warehousemen of America, Local 274: Cook Produce, Inc., Bodine Produce Company, EverKrisp Vegetables Inc., and Tanita Farms.

This is also in formal response to the petitions. On behalf of Bodine Produce Company, EverKrisp Vegetables Inc. and Tanita Farms, the undersigned avows that said companies employ no field laborers in the lettuce harvest currently underway; that they do not pay the wages of any such employees for work performed for their benefit; and that they do not know the names of the persons who are involved in said harvest; but that the harvest of lettuce is accomplished by a contract with an independent labor contractor. In the case of each employer, the terms of the contract call for the payment of a fixed sum to the contractor for the performance of the ultimate work, and the manner and method of performing that work is not controlled by the employer. There is no employer-employee relationship between Bodine Produce Company, EverKrisp Vegetables, Inc. and Tanita Farms and the persons employed by their independent labor contractors.

As to Cook Produce, Inc., pursuant to A.R.S. § 23-1389 F, Cook Produce, Inc. hereby challenges the petition, *inter alia*, on the grounds that the authorization for the filing of such petition is not current and that such authorization has been obtained by fraud, misrepresentation or coercion.

Furthermore, it is noted that the petitions are not dated, that the employer was not, as alleged, contacted for a request for recognition and that the designation of bargaining unit involved is incorrect.

Respectfully,

JENNINGS, STROUSS & SALMON

By_____
Jon L. Kyl

[Letterhead of Jennings, Strouss & Salmon]

December 17, 1974

Robert Dickelman
General Counsel
Agricultural Labor Relations Board
1645 West Jefferson, 4th Floor
Phoenix, Arizona 85007

Re: Teamster Labor Petitions

Dear Bob:

This letter is to confirm our telephone conversation this morning and to summarize the final status of the petitions filed by the Teamsters Union, and in one case by the grower, for organization of agricultural field laborers.

First, please consider this as a formal request for withdrawal of the petitions filed by J. A. Wood Company. Second, this will confirm that all pending petitions against the other growers (except for Cook Produce, for which the Board has certified the results

of the election held) have been withdrawn by the Teamsters Union and that the Board has acknowledged the withdrawal. As I understand it, therefore, since no other petitions were accepted by the Board, the following petitions are now considered withdrawn.

J. A. Wood petition
Teamsters petition for Bodine Produce
Teamsters petition for Tanita Farms
Teamsters petition for EverKrisp Vegetables
Teamsters petition for Cactus Distributing

Finally, you know that we intended to appeal the decision of the Board relating to the definition of "employer" and "independent contractor" on behalf of Bodine Produce, Tanita Farms and EverKrisp. However, the withdrawal of the petitions against Bodine Produce and EverKrisp, and the Board's ruling that there was an insufficient showing with respect to Tanita Farms, rendered the question moot, and an appeal would, therefore, have been futile. As counsel for the Vegetable Growers Association and these individual growers, I do want to state for the record that the Board's decision was incorrect and, in view of the fact that we had no opportunity to obtain a reversal of the opinion by virtue of the mootness of the question, we believe that is has no precedential value.

On behalf of the Association, I also wish to express our appreciation for the manner in which you conducted the various meetings and hearings under very difficult circumstances.

Very truly yours,

JENNINGS, STROUSS & SALMON

By_____
Jon L. Kyl

cc: Paul Hunter
Jack McManus
Ralph Bodine
Jim Dorsey
Tom Tanita
Scott Wilkinson
Bill Cook

BEFORE THE
AGRICULTURAL EMPLOYMENT RELATIONS BOARD

DECISION

TANITA FARMS (CE 1-74),
EVERKRISP VEGETABLES, INC. (CE 2-74), and
BODINE PRODUCE COMPANY (CE 4-74),
Employers

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL 274, Petitioner

CASE HISTORY:

On November 12, 1974, the Petitioners filed four petitions with this Board alleging that 30% or more of the employees at Tanita Farms, EverKrisp Vegetables, Inc., Bodine Produce Company and Cook Produce, Inc., had signed Petitioner's authorization cards, and requested that this Board conduct certification elections.

The Petitioner and Cook Produce, Inc., signed a consent election agreement on November 20, 1974. Tanita Farms, EverKrisp Vegetables, Inc., and Bodine Produce Company, however, contended that they employed no employees in the harvest of lettuce, and asked that the Petitions against them be dismissed.

A formal hearing on the matter was held in Phoenix, Arizona on November 25, 1974, before a Hearing Officer of this Board. Both parties were represented by counsel and the issues were full argued. The cases, by stipulation of the parties, were consolidated for the purpose of this hearing.

FINDINGS OF FACT:

Section 23-1382(1) defines an "Agricultural Employee, Temporary" and states in the portion pertinent to this decision:

> "If otherwise qualified, a person shall be considered an agricultural employee if an agricultural employer pays the wages of the employee for work performed for the employer's benefit or on his behalf, even though the supervision of the em-

ployee, the bookkeeping, and the issuance of payroll checks is by a person other than the employer."

Section 23-1382(2) defines an "Agricultural Employer" and states:

"..., and includes any person who provides labor and services on one or more farms as an independent contractor ..."

In the case of all three growers here, contractors are used to supply the lettuce harvest crews. The contractors are paid a given amount per carton of lettuce delivered to the pre-cooling facilities. Bodine Produce Company operates its own cooler facility and an employee of Bodine inspects the lettuce on delivery for size, condition and shape. Tanita Farms and EverKrisp Vegetables, both use a commercial cooling facility. An employee of Tanita Farms inspects the lettuce for quality, while EverKrisp Vegetables depends upon the prospective buyers to perform that function.

In all three cases, the contractor sets the wage rates of the harvest crews, supplies the necessary tools, keeps the records, and hires the members of the harvest crews.

If the grower is not satisfied with the quality of the lettuce being harvested, an executive or employee of the grower relays that dissatisfaction to the contractor or one of his foremen.

REASONING AND CONCLUSIONS:

We are called upon to interpret Sections 23-1382(1) and (2) of the Act, and to apply those Sections to the facts as brought out in the hearing.

We believe, and so find, that the overall intent of the Act is to regulate conduct between the growers, the workers, and the labor organizations in the field of agricultural, in order to achieve the declared policy of the Act as contained in Section 23-1381. To accomplish this purpose it is necessary to provide a direct link between the three parties.

We, therefore, find that in the cases presented here, the labor contractors are, in effect, supervisors of the growers and, as such, not the employers of the harvest crews. We reach this decision on the basis of our belief that through the ultimate control of the quality of the product harvested and by direct contacts with the foremen in the fields, the growers exercise day-to-day control of the workers, their performances, and the quality of their work.

DECISION:

We find the Petitions filed with regard to Tanita Farms, Inc., EverKrisp Vegetables, Inc., and Bodine Produce Company, Inc., have identified the correct employers, and direct that a hearing be held on Thursday, December 5, 1974, at 9:00 a.m. in Room 212, 1645 W. Jefferson, Phoenix, Arizona, for the purpose of resolving any remaining issues.

Dr. William S. Boice, Vice-Chariman
Gene Blake, Member
John Consaul, Member
E. N. Holgate, Member
Jack McManus, Member
Jack Montgomery, Member

[Letterhead of Agricultural Employment Relations Board]

December 6, 1974

International Brotherhood of
Teamsters, Local 274
1450 S. 27th Avenue
Phoenix, Arizona 85009

Re: Tanita Farms
Case No. CE-74

ATTN: MR. JOHN BLAKE

Dear Mr. Blake:

The union's showing of interest being inadequate to meet the required 30% under the provisions of Section 23-1389 (C) (1) A.R.S., your petition for a representation election at Tanita Farms is hereby dismissed.

Sincerely,

Robert E. Dickelman
General Counsel

[Letterhead of Agricultural Employment Relations Board]

SUBPOENA

In the matter of:

EverKrisp Vegetables, Inc., Case No. CE 2-74

TO: Joe Rodriguez
5610 West Maryland
Glendale, Arizona

Pursuant to Section 23-1391, Arizona Revised Statutes, you are hereby ordered to appear and testify under oath in the above matter before a Hearing Officer of this Board at the hour of 9:00 a.m., on the 5th day of December 1974, in Room 212, 1645 West Jefferson, Phoenix, Arizona, and there and then to produce for inspection by the Hearing Officer the following described records and documents, to wit:

Payroll records for those employees employed in the harvest of lettuce at EverKrisp Vegetables, Inc., Tolleson, Arizona, for the period ending November 12, 1974; and cancelled payroll checks, one per employee, for those persons indicated as being employed by EverKrisp Vegetable, Inc., as of November 12, 1974.

Failure to obey this Subpoena may result in enforcement in accordance with Section 23-1391(B), Arizona Revised Statutes. Signed and dated at Phoenix, Arizona, this 3rd day of December, 1974.

Robert Dickelman
General Counsel

STATE OF ARIZONA
AGRICULTURAL EMPLOYMENT
RELATIONS BOARD

Cook Produce Company, *Employer* International Brotherhood of Teamsters, Local 274, *Petitioner*	TYPE OF ELECTION (Check one) X Consent Agreement __ Board Direction Case No. CE 3-74

CERTIFICATION OF RESULTS OF ELECTION

An election having been conducted in the above matter under the supervision of the Agricultural Employment Relations Board in accordance with the Rules and Regulations of the Board; and it appearing from the Tally of Ballots that no collective bargaining representative has been selected; and no objections having been filed to the Tally of Ballots furnished to the parties, or to the conduct of the election within the time provided therefor;

Pursuant to authority vested in the undersigned by the Agricultural Employment Relations Board,

INSTRUCTIONS: Submit an origin[illegible] and four (4) copies of this Petition to ALRB. If more space is required for any one item, attach additional sheets, numbering item accordingly.

Case No.
C.E 4-74

Date Filed
November 12, 1974

The Petitioner alleges that the following circumstances exist and requests that the Agricultural Employment Relations Board proceed under its proper authority.

1. Name of Employer	Employer Representative to Contact	Phone No.
Rodino Produce Company		277-2634

2. Address(es) of Establishment(s) Involved (Street, number, city, State and Zip code)

Grand Ave & El Wambra - P O Box 11366 - Phoenix, Arizona 85017

3. Unit Involved

Included

All Field Laborers

Excluded

Supervisors, office workers and guards as outlined in the Act

4a Number of Employees in Unit:

Present 70

Proposed (By UC/AC) _____

4b Is This Petition Supported By 30% or more of the employees in the Unit?

XX Yes _____ No

5a. X Request for recognition as Bargaining Representative was made on 11/11/74 (Month, day, year) and Employer declined recognition on or about No Reply (Month, day, year) (If no reply, so state)

5b. _____ Petitioner is currently recognized as Bargaining Representative and desires certification under the act.

6. Recognized or Certified Bargaining Agent (If there is none, so state)

NAME	AFFILIATION
None	
ADDRESS	DATE OF RECOGNITION OR CERTIFICATION

7. Date of Expiration of Current Contract, If Any (Show month, day, and year)

None

8a Is There Now a Strike or Picketing at the Employer's Establishment(s) Involved?

_____ Yes XX No

8b If So, Approximately How Many Employees are Participating? None

8c The Employer has been Picketed by or on Behalf of _____ (Insert Name), a Labor Organization, of _____ (Insert Address) Since _____ (Month, day, year)

Organizations or Individuals Other than Petitioner (And Other Than Those Named in Item 8) Which Have Claimed Recognition As Representatives and Other Organizations and Individuals Known to Have a Representative Interest in Any Employees in the Unit Described in Item 5 Above. (If None, So State)

NAME	AFFILIATION	ADDRESS	DATE OF CLAIM (Required only if Petition is filed by Employer)

I declare that I have read the above petition and that the statements therein are true to the best of my knowledge and belief.

[illegible]sters Local 274 - Affiliate of International Brotherhood of Teamsters, [illegible] Agricultural Workers
(Petitioner and Affiliation, if any)

John A. Bell, Secretary-Treasurer
(Name and title of representative signing for Petitioner) (Date, if any)

INSTRUCTIONS: Submit an original and four (4) copies of this Petition to ALRB. If more space is required for any one item, attach additional sheets, numbering item accordingly.

Case No. CE 1-74

Date Filed November 12, 1974 RD

The Petitioner alleges that the following circumstances exist and requests that the Agricultural Employment Relations Board proceed under its proper authority.

1. Name of Employer: TANITA FARMS | Employer Representative to Contact: | Phone No.: 937-9721

2. Address(es) of Establishment(s) Involved (Street, number, city, State and ZIP code):
5330 W Lamar Rd - Glendale, Arizona 85301 (P.O. Box 815)

3. Unit Involved

Included:
All Field Laborers

Excluded:
Supervisors, office workers and guards as outlined in the Act

4a. Number of Employees in Unit:
Present 40
Proposed (By UC/AC) _____

4b. Is This Petition Supported by 30% or more of the employees in the Unit?
X Yes _____ No

5a. X Request for recognition as Bargaining Representative was made on Nov 11 '74 (Month, day, year) and Employer declined recognition on or about No Reply (Month, day, year) (If no reply, so state)

5b. _____ Petitioner is currently recognized as Bargaining Representative and desires certification under the act.

6. Recognized or Certified Bargaining Agent (If there is none, so state)
NAME: None | AFFILIATION:
ADDRESS: | DATE OF RECOGNITION OR CERTIFICATION:

7. Date of Expiration of Current Contract, If Any (Show month, day, and year)
None

8a. Is There Now a Strike or Picketing at the Employer's Establishment(s) Involved?
_____ Yes XX No

8b. If So, Approximately How Many Employees are Participating? None

8c. The Employer has been Picketed by or on Behalf of None (Insert Name), a Labor Organization, of _____ (Insert Address) since _____ (Month, day, year)

9. Organizations or Individuals Other than Petitioner (And Other Than Those Named in Item 8) Which Have Claimed Recognition As Representatives and Other Organizations and Individuals Known to Have a Representative Interest in Any Employees in the Unit Described in Item 5 Above. (If None, So State)

NAME	AFFILIATION	ADDRESS	DATE OF CLAIM (Required only if Petition is filed by Employer)

I declare that I have read the above petition and that the statements therein are true to the best of my knowledge and belief.

Teamsters Local 274 Affiliate of International Brotherhood of Teamsters, Chauffeurs & Warehousemen of America
(Petitioner and Affiliation, if any)

By John J. Bell
(Signature of representative filing petition)

Secretary-Treasurer
(Title, if any)

INSTRUCTIONS: Submit an orig. 1 and four (4) copies of this Petition to ALRB. If more space is required for any one item, attach additional sheets, numbering item accordingly.

Case No.
CE 2-74

Date Filed
November 12, 1974 RD

The Petitioner alleges that the following circumstances exist and requests that the Agricultural Employment Relations Board proceed under its proper authority.

1. Name of Employer
EverFresh Vegetables Inc.

Employer Representative to Contact

Phone No.
[illegible]

2. Address(es) of Establishment(s) Involved (Street, number, city, State and ZIP code)
6409 W Parrison - Tolleson, Arizona

3. Unit Involved

Included
All Field Laborers

Excluded
Supervisors, office workers and guards as outlined in the Act

4a. Number of Employees in Unit:
Present 56
Proposed (By UC/AC) _____

4b. Is This Petition Supported By 30% or more of the employees in the Unit?
XX Yes _____ No

5a. XX Request for recognition as Bargaining Representative was made on 11/7/74 (Month, day, year) and Employer declined recognition on or about No Reply (Month, day, year) (If no reply, so state)

5b. _____ Petitioner is currently recognized as Bargaining Representative and desires certification under the act.

6. Recognized or Certified Bargaining Agent (If there is none, so state)

NAME: None
AFFILIATION:
ADDRESS:
DATE OF RECOGNITION OR CERTIFICATION:

7. Date of Expiration of Current Contract, If Any (Show month, day, and year)

8a. Is There Now a Strike or Picketing at the Employer's Establishment(s) Involved?
_____ Yes XX No

8b. If So, Approximately How Many Employees are Participating? None

8c. The Employer Has Been Picketed By or On Behalf of None (Insert Name), a Labor Organization, of _____ (Insert Address) Since _____ (Month, day, year)

9. Organizations or Individuals Other than Petitioner (And Other Than Those Named in Item 8) Which Have Claimed Recognition As Representatives and Other Organizations and Individuals Known to Have a Representative Interest in Any Employees in the Unit Described in Item 5 Above. (If None, So State)

NAME	AFFILIATION	ADDRESS	DATE OF CLAIM (Required only if Petition is Filed by Employer)

I declare that I have read the above petition and that the statements therein are true to the best of my knowledge and belief.

Teamsters Local 274 affiliate of International Brotherhood of Teamsters, Chauffeurs & Warehousemen of America
(Petitioner and Affiliation, if any)

John A. Blair
(Signature of representative or person filing petition)

Secretary-Treasurer
(Title, if any)

IT IS HEREBY CERTIFIED that a majority of the valid ballots has not been cast for any labor organization appearing on the ballot, and that no such organization is the exclusive representative of all the employees, in the unit herein involved, within the meaning of Section 23-1389 of the Agricultural Employment Relations Act.

Signed at Phoenix, Arizona

On the 6th day of December , 1974

Agricultural Employment Relations Board

STATE OF ARIZONA
AGRICULTURAL EMPLOYMENT RELATIONS BOARD

AGREEMENT FOR CONSENT ELECTION

Pursuant to a Petition duly filed, the undersigned parties hereby waive a hearing and AGREE AS FOLLOWS:

1. SECRET BALLOT - An election by secret ballot shall be held under the supervision of the said Board, among the employees of the undersigned Employer in the unit defined below, at the indicated time and place, to determine whether or not such employees desire to be represented for the purpose of collective bargaining by (one of) the undersigned labor organization(s). Said election shall be held in accordance with the Board's Rules and Regulations, and the applicable procedures and policies of the Board.

2. ELIGIBLE VOTERS - The eligible voters shall be those employees included within the Unit described below, who were employed during the payroll period indicated below, including employees who did not work during said payroll period because they were ill or on vacation or temporarily laid off, employees in the military services of the United States who appear in person at the polls, employees engaged in an economic strike which commenced less than three (3) months before the election date and who retained their status as such during the eligibility period and their replacements, but *excluding* any employees who have since quit or been discharged for cause and employees engaged in a strike who have been discharged for cause since the commencement thereof, and who have not been rehired or reinstated prior to the date of the election, and employees engaged in an economic strike which commenced more than three (3) months prior to the date of the election and who have been permanently replaced. At a date fixed, the parties, as requested will furnish to the Board, an accurate list of all the eligible voters, together with a list of the employees, if any, specifically excluded from eligibility.

3. NOTICES OF ELECTION - The Board shall prepare a Notice of Election and supply copies to the parties describing the manner and conduct of the election to be held and the parties, upon the request of and at a time designated by the Board, will post such Notice of Election at conspicuous and usual posting places easily accessible to the eligible voters.

4. OBSERVERS - Each party hereto will be allowed to station an equal number of authorized observers, selected from among the nonsupervisory employees of the Employer, at the polling places during the election to assist in its conduct, to challenge the eligibility of voters, and to verify the tally.

5. TALLY OF BALLOTS - As soon after the election as feasible, the votes shall be counted and tabulated by the Board, or its agent or agents. Upon the conclusion of the counting, the Board shall furnish a Tally of Ballots to each of the parties. When appropriate, the Board shall issue to the parties a certification of representatives or of results of election, as may be indicated.

6. OBJECTIONS, CHALLENGES, REPORTS THEREON - Objections to the conduct of the election or conduct affecting the results of the election, or to a determination of representatives based on the results thereof, may be filed with the Board within 5 days after issuance of the Tally of Ballots. Copies of such objections must be served upon the other parties at the time of filing with the Board. The Board shall investigate the matters contained in the objections and issue a report thereon. If objections are sustained, the Board may in its report include an order voiding the results of the election and, in that event, shall be empowered to conduct a new election under the terms and provisions of this agreement at a date, time, and place to be determined by them. If the challenges are determinative of the results of the election, the Board shall investigate the challenges and issue a report thereon. The method of investigation of objections and challenges, including the question whether a hearing

should be held in connection therewith, shall be determined by the Board, whose decision shall be final and binding.

7. RUN-OFF PROCEDURE - In the event more than one labor organization is signatory to this agreement, and in the event that no choice on the ballot in the election receives a majority of the valid ballots cast, the Board shall proceed in accordance with the Board's Rules and Regulations.

8. WORDING ON THE BALLOT - Where only one labor organization is signatory to this agreement, the name of the organization shall appear on the ballot and the choice shall be "Yes" or "No." In the event more than one labor organization is signatory to this agreement, the choices on the ballot will appear in the wording indicated below and in the order enumerated below, reading from left to right on the ballot, or if the occasion demands, from top to bottom. *(If more than one union is to appear on the ballot, any union may have its name removed from the ballot by the approval of the Board of a timely request, in writing, to that effect.)*

First.

Second.

Third.

10. PAYROLL PERIOD FOR ELIGIBILITY - Wednesday, November 20, 1974, at 4:00 p.m.

11. DATE, HOURS, AND PLACE OF ELECTION -
Date: November 27, 1974
Hours: 1:00 P.M. to 2:00 P.M.
Place: Indian School Road at Cotton Lane

12. THE APPROPRIATE COLLECTIVE BARGAINING UNIT - All employees engaged in the harvest of lettuce including Lidders, Cutter-Packers, Waterboys, Loaders, and Windrows; but excluding supervisors, office workers and guards as defined in the Act, and all other employees not herein named.

_____ _____

By _____ _____ _____ _____
(Name and Title) (Date) (Name and Title) (Date)

Recommended:

_____ _____
(Board Agent) (Date)

Date approved _____ _____

_____ By _____ _____
Agricultural Employment Relations Board (Name and Title) (Date)

Case No. CE 3-74

EXHIBIT 5

[Letterhead of JENNINGS, STROUSS & SALMON]

December 17, 1974

Robert Dickelman
General Counsel
Agricultural Labor Relations Board
1645 West Jefferson, 4th Floor
Phoenix, Arizona 85007

Re: Teamster Labor Petitions

Dear Bob:

This letter is to confirm our telephone conversation this morning and to summarize the final status of the petitions filed by the Teamsters Union, and in one case by the grower, for organization of agricultural field laborers.

First, please consider this as a formal request for withdrawal of the petitions filed by J. A. Wood Company. Second, this will confirm that all pending petitions against the other growers (except for Cook Produce, for which the Board has certified the results of the election held) have been withdrawn by the Teamsters Union and that the Board has acknowl-

INSTRUCTIONS: Submit an original and four (4) copies of this Petition to ALRB. If more space is required for any one item, attach additional sheets, numbering item accordingly.

Case No. CE 3-74

Date Filed November 12, 1974 RD

The Petitioner alleges that the following circumstances exist and requests that the Agricultural Employment Relations Board proceed under its proper authority.

1. Name of Employer	Employer Representative to Contact	Phone No.
Cook Produce Inc.		937-9033

2. Address(es) of Establishment(s) Involved (Street, number, city, State and ZIP code)

6123 N 55th Avenue - P O Box 848 - Glendale, Arizona 85301

3. Unit Involved

Included

All Field Laborers

Excluded

Supervisors, office workers and guards as outlined in the Act

4a Number of Employees in Unit:

Present 40

Proposed (By UC/AC) _____

4b Is This Petition Supported By 30% or more of the employees in the Unit?

XX Yes _____ No

5a. XX Request for recognition as Bargaining Representative was made on 11/12/74 (Month, day, year) and Employer declined recognition on or about No reply (Month, day, year) (If no reply, so state)

5b. _____ Petitioner is currently recognized as Bargaining Representative and desires certification under the act.

6. Recognized or Certified Bargaining Agent (If there is none, so state)

NAME	AFFILIATION
None	
ADDRESS	DATE OF RECOGNITION OR CERTIFICATION

7. Date of Expiration of Current Contract, If Any (Show month, day, and year)
None

8a Is There Now a Strike or Picketing at the Employer's Establishment(s) Involved?
Yes XX No

8b If So, Approximately How Many Employees are Participating? None

8c. The Employer Has Been Picketed By or On Behalf of None (Insert Name), a Labor Organization, of _____ (Insert Address) Since _____ (Month, day, year)

9. Organizations or Individuals Other than Petitioner (And Other Than Those Named in Item 8) Which Have Claimed Recognition As Representatives and Other Organizations and Individuals Known to Have a Representative Interest in Any Employees in the Unit Described in Item 5 Above. (If None, So State)

NAME	AFFILIATION	ADDRESS	DATE OF CLAIM (Required only if Petition is filed by Employer)

I declare that I have read the above petition and that the statements therein are true to the best of my knowledge and belief.

Teamsters Local 274 affiliate of International Brotherhood of Teamsters, Chauffeurs, & Warehousemen of America
(Petitioner and Affiliation, if any)

By John J. Blair Secretary-Treasurer
(Signature of Representative or person filing petition) RE LOCAL 274 (Title, if any)

edged the withdrawal. As I understand it, therefore, since no other petitions were accepted by the Board, the following petitions are now considered withdrawn.

J. A. Wood petition

Teamsters petition for Bodine Produce

Teamsters petition for Tanita Farms

Teamsters petition for EverKrisp Vegetables

Teamsters petition for Cactus Distributing

Finally, you know that we intended to appeal the decision of the Board relating to the definition of "employer" and "independent contractor" on behalf of Bodine Produce, Tanita Farms and EverKrisp. However, the withdrawal of the petitions against Bodine Produce and EverKrisp, and the Board's ruling that there was an insufficient showing with respect to Tanita Farms, rendered the question moot, and an appeal would, therefore, have been futile. As counsel for the Vegetable Growers Association and these individual growers, I do want to state for the record that the Board's decision was incorrect and, in view of the fact that we had no opportunity to obtain a reversal of the opinion by virtue of the mootness of the question, we believe that it has no precedential value.

On behalf of the Association, I also wish to express our appreciation for the manner in which you conducted the various meetings and hearings under very difficult circumstances.

Very truly yours,

JENNINGS, STROUSS & SALMON

By
John L. Kyl

cc: Paul Hunter
Jack McManus
Ralph Bodine
Jim Dorsey
Tom Tanita
Scott Wilkinson
Bill Cook

BEFORE THE
AGRICULTURAL EMPLOYMENT
RELATIONS BOARD

Decision and Direction of Election

CACTUS DISTRIBUTORS, INC., *Employer* INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL 274 *Petitioner*	CASE NO. CE 5-74

This Board having considered the evidence before it and having determined that the Petition in the above captioned matter is valid with regard to the showing of interest submitted by Petitioner, and there being no other issues to be decided, hereby Orders and Directs that an election shall be held among the employees of the Employer in accordance with the provisions of Section 23-1389(D), A.R.S., on the 17th day of December, 1974, at the time, place, and in the employee unit described below, or at such time and place as the Employer and Petitioner may mutually consent to. Further, pursuant to Section 23-1389(I), A.R.S., the Employer is hereby Ordered and Directed to furnish this Board a list of employees employed in the appropriate unit, as of the payroll ending November 27, 1974, on or before the 16th day of December, 1974.

Time: 11:00 a.m. to 12:30 p.m.
Place: The Employer's labor facilities at 115th Avenue and Route 80 (C.W. Englund Camp)

Appropriate Unit: All employees engaged in the harvest of lettuce including Lidders, Cutter-Packers, Waterboys, Loaders, and Windrows; but excluding supervisors, office workers and guards as defined in the Act, and all other employees not herein named.

Milton G. Sanders, Chairman
Dr. William Boice,
Vice-Chairman
E. N. Holgate, Member
Gene Blake, Member

December 4, 1974

EXHIBIT 6

[Letterhead of Jennings, Strouss & Salmon]

December 17, 1974

Robert Dickelman
General Counsel
Agriculture Labor Relations Board
1645 West Jefferson, 4th Floor
Phoenix, Arizona 85007

Re: Teamster Labor Petitions

Dear Bob:

This letter is to confirm our telephone conversation this morning and to summarize the final status of the petitions filed by the Teamsters Union, and in one case by the grower, for organization of agricultural field laborers.

First, please consider this as a formal request for withdrawal of the petitions filed by J. A. Wood Company. Second, this will confirm that all pending petitions against the other growers (except for Cook Produce, for which the Board has certified the results of the election held) have been withdrawn by the Teamsters Union and that the Board has acknowledged the withdrawal. As I understand it, therefore, since no other petitions were accepted by the Board, the following petitions are now considered withdrawn.

J. A. Wood petition

Teamsters petition for Bodine Produce

Teamsters petition for Tanita Farms

Teamsters petition for EverKrisp Vegetables

Teamsters petition for Cactus Distributing

Finally, you know that we intended to appeal the decision of the Board relating to the definition of "employer" and "independent contractor" on behalf of Bodine Produce, Tanita Farms and EverKrisp. However, the withdrawal of the petitions against Bodine Produce and EverKrisp, and the Board's ruling that there was an insufficient showing with respect to Tanita Farms, rendered the question moot, and an appeal would, therefore, have been futile. As counsel for the Vegetable Growers Association and these individual growers, I do want to state for the record that the

Board's decision was incorrect and, in view of the fact that we had no opportunity to obtain a reversal of the opinion by virtue of the mootness of the question, we believe that it has no precedential value.

On behalf of the Association, I also wish to express our appreciation for the manner in which you conducted the various meetings and hearings under very difficult circumstances.

Very truly yours,

JENNINGS, STROUSS & SALMON

By
Jon L. Kyl

cc: Paul Hunter
Jack McManus
Ralph Bodine
Jim Dorsey
Tom Tanita
Scott Wilkinson
Bill Cook

[Letterhead of Agricultural Employment Relations Board]

NOTICE OF HEARING

You are hereby notified that pursuant to Section R4-219 of the Rules and Regulations of the Agricultural Employment Relations Board, a hearing will be held on the Petitions (attached) of the J. A. Wood Co. (Case Nos. ERP 1-74 and ERP 2-74) on Wednesday,

INSTRUCTIONS: Submit an original and four (4) copies of this Petition to ALRB. If more space is required for any one item, attach additional sheets, numbering item accordingly.

Case No. CE 5-74

Date Filed November 22, 1974

The Petitioner alleges that the following circumstances exist and requests that the Agricultural Employment Relations Board proceed under its proper authority.

1. Name of Employer	Employer Representative to Contact	Phone No.
CACTUS DISTRIBUTORS INC.	Frank Cannata	931-5301

2. Address(es) of Establishment(s) Involved (Street, number, city, State and ZIP code)

5610 W Maryland - Glendale, Az. 85311 P O Box 848

3. Unit Involved

Included

All employees employed in lettuce harvest

Excluded

Supervisors, guards, office clerical as defined in the Act

4a Number of Employees in Unit:

Present 70

Proposed (By UC/AC) _____

4b Is This Petition Supported By 30% or more of the employees in the Unit?

xx Yes _____ No

5a. xx Request for recognition as Bargaining Representative was made on 11/22/74 (Month, day, year) and Employer declined recognition on or about No reply (Month, day, year) (If no reply, so state)

5b. _____ Petitioner is currently recognized as Bargaining Representative and desires certification under the act.

6. Recognized or Certified Bargaining Agent (If there is none, so state)

NAME _____ AFFILIATION _____

ADDRESS _____ DATE OF RECOGNITION OR CERTIFICATION

7. Date of Expiration of Current Contract, If Any (Show month, day, and year)

None

8a Is There Now a Strike or Picketing at the Employer's Establishment(s) Involved?

Yes xx No

8b If So, Approximately How Many Employees are Participating?

8c The Employer has been Picketed By or On Behalf of _____ (Insert Name), a labor Organization, of _____ (Insert Address) Since _____ (Month, day, year)

9. Organizations or Individuals Other than Petitioner (And Other Than Those Named in Item 8) Which Have Claimed Recognition As Representatives and Other Organizations and Individuals Known to Have a Representative Interest in Any Employees in the Unit Described in Item 5 Above. (If None, So State)

NAME	AFFILIATION	ADDRESS	DATE OF CLAIM (Required only if Petition is filed by Employer)
None			

I declare that I have read the above petition and that the statements therein are true to the best of my knowledge and belief.

Teamsters Local 274 affiliate of International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America

(Petitioner and Affiliation, if any)

(Signature of Representative or person filing charge)

Secretary-Treasurer

(Title, if any)

December 11, 1974, at 9:00 a.m. in Room 212, 1645 West Jefferson, Phoenix, Arizona, before a Hearing Officer of this Board.

Be advised that the parties must be prepared to present evidence and arguments on all issues they wish to raise relative to these petitions.

Robert E. Dickelman
General Counsel

PETITION TO AGRICULTURAL EMPLOYMENT RELATIONS BOARD

J. A. Wood Co. — Vista Inc. hereby petitions the Agricultural Employment Relations Board, pursuant to A.R.S. § 23-1389 B 2 that a question of representation of certain of its employees exists and that the Sales Drivers and Helpers Local Union No. 274, 1450 South 27th Avenue, Phoenix, Arizona has claimed to represent the said employees of petitioner, and that an election must be held to determine whether such claim is valid.

The unit involved is the field labor involved in the harvest of lettuce at all Arizona locations, more specifically described as:

> All employees engaged in the harvest of lettuce including Lidders, Cutter-Packers, Waterboys, Loaders and Windrows; but excluding supervisors, office workers and guards as defined in the Act, and all other employees not herein named.

There is not now a strike, but there has been picket activity, both primary and secondary by the Union and its affiliates.

DATED this 3rd day of December, 1974.

I declare that I have read this petition and that the statements therein are true to the best of my knowledge and belief.

Jack McManus
General Manager
J. A. Wood Co.—Vista Inc.
P. O. Box 218
Tolleson, AZ 85353
Phone: 936-3345

EXHIBIT 8

[Letterhead of Rolle, Jones, Benton & Cole]

March 28, 1975

Agricultural Employment Relations Board
1645 West Jefferson, Room 435
Phoenix, Arizona 85007

Attention: Robert E. Dickelman

Re: Petition of G & S Produce Co.
Case No. ERP 1-75

Gentlemen:

Please be advised that the petitioner, G & S Produce Co., Inc., hereby petitions the above-entitled

Board to withdraw its Petition for Certification by Employer filed with your office on the 25th day of March, 1975.

Pursuant to our conversation of today's date, it is my understanding that this letter is all that is necessary to withdraw the petition. Thank you for your assistance in this matter.

Very truly yours,

ROLLE, JONES, BENTON & COLE

F. Keith Benton

NOTICE OF HEARING

You are hereby notified that pursuant to Section 23-1389, Arizona Revised Statutes, and Section R4-219, Rules and Regulations of the Agricultural Employment Relations Board, a hearing on the attached Petition for an election filed by G. & S. Produce, Inc., will be held before a Hearing Officer of this Board on Tuesday, April 1, 1975, at the hour of 10:00 a.m., at a location to be established.

You are further notified that Section 23-1385 (B)(12)(c), A.R.S., declares it to be unfair labor practice for a labor organization to continue picket activity after the filing of a petition.

Be advised that the parties must be prepared to present evidence and arguments on all issues they wish to raise relative to this petition.

Signed and dated at Phoenix, Arizona, this 25th day of March, 1975.

Robert E. Dickelman
Executive Secretary

BEFORE THE AGRICULTURAL EMPLOYMENT RELATIONS BOARD

In the Matter of the Application of G & S PRODUCE CO., INC., an Arizona corporation *Employer.*	PETITION FOR CERTIFICATION BY EMPLOYER PURSUANT TO A.R.S. 23-1389C ERP 1-75

COMES NOW G & S PRODUCE CO., INC., an Arizona corporation, whose address is P. O. Box 552, Somerton, Arizona 85350, and, for its claim before the above-entitled Board, alleges in support of this petition that G & S Produce Co., Inc., is an Arizona corporation and is engaged in farming and growing lettuce and cantaloupe crops in Yuma County, Arizona; that on or about the 26th day of January, 1975, your petitioner, G & S Produce Co., Inc., received a letter from the following labor organization: "Sales Drivers and Helpers, Local Union No. 274, Affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, 1450 South 27th Avenue, Phoenix, Arizona 85009." That said letter was signed

INSTRUCTIONS: Submit an ori[illegible] and four (4) copies of this Petition to ALRB. If more space is required for any one item, attach additional sheets, numbering item accordingly.

No. LAO 1-74

Date Filed DECEMBER 3, 1974

The Petitioner alleges that the following circumstances exist and requests that the Agricultural Employment Relations Board proceed under its proper authority.

1. Name of Employer	Employer Representative to Contact	Phone No.
J. A. WOOD CO.-VISTA INC.	Jack McManus	936-3345

2. Address(es) of Establishment(s) Involved (Street, number, city, State and ZIP code)

93rd Avenue & Harrison, Tolleson - P. O. Box 218, Tolleson, AZ 85353

3. Unit Involved

Included

Employees engaged in the harvest of lettuce including lidders, cutter-packers, waterboys, loaders and windrows at all Arizona locations

Excluded

Supervisors, office workers and guards as defined in the Act, and all other employees not herein named

4a. Number of Employees in Unit:

Present 249

Proposed (By UC/AC) _____

4b. Is This Petition Supported By 30% or more of the employees in the Unit?

_____Yes _____No

5a. _____Request for recognition as Bargaining Representative was made on _____ (Month, day, ye[illegible]

and Employer declined recognition on or about _____ (If no reply, (Month, day, year)

so state)

Union has contended for last several months it is the bargaining representat[illegible]

5b. _____Petitioner is currently recognized as Bargaining Representative and desires certification under the act.

6. Recognized or Certified Bargaining Agent (If there is none, so state)

NAME	AFFILIATION
ADDRESS	DATE OF RECOGNITION OR CERTIFICATION

7. Date of Expiration of Current Contract, If Any (Show month, day, and year)

8a. Is There Now a Strike or Picketing at the Employer's Establishment(s) Involved?

_____Yes _____No

8b. If So, Approximately How Many Employees are Participating?

8c. The Employer Has Been Picketed by or On Behalf of Local Union No. 274 (Insert Name), a Labor Organization, of 1450 South 27th Avenue, Phoenix, AZ (Insert Address) Since _____ (Month, day, year)

9. Organizations or Individuals Other than Petitioner (And Other Than Those Named in Item 8) Which Have Claimed Recognition As Representatives and Other Organizations and Individuals Known to Have a Representative Interest in Any Employees in the Unit Described in Item 5 Above. (If None, So State)

NAME	AFFILIATION	ADDRESS	DATE OF CLAIM (Required only if Petition is filed by Employer)
NONE			

December 3, 1974

I declare that I have read the above petition and that the statements therein are true to the best of my knowledge and belief.

J. A. WOOD CO.-VISTA INC.
(Petitioner and Affiliation, if any)

By [signature] Jack McManus
(Signature of Representative or person filing petition)

General Manager
(Title, if any)

[illegible] P. O. Box 218, Tolleson, AZ 85353 936-3345

of this Petition to ALRB. If more space is required for any one item, attach additional sheets, numbering item accordingly.

Date Filed
DECEMBER 5, 1974

The Petitioner alleges that the following circumstances exist and requests that the Agricultural Employment Relations Board proceed under its proper authority.

1. Name of Employer	Employer Representative to Contact	Phone No.
J. A. Wood Co.-Vista Inc. P. O. Box 212, Tolleson, AZ 85353	Jack McManus	936-3345

2. Address(es) of Establishment(s) involved (Street, number, city, State and ZIP code)

Red Mountain Ranch, near Scottsdale, AZ, on the Ft. McDowell Indian Reservati

3. Unit Involved	4a. Number of Employees in Unit:
Included Employees engaged in the harvest of lettuce, including lidders, cutter-packers, waterboys, loaders and windrows at Red Mountain Ranch Excluded Supervisors, office workers and guards as defined in the Act, and all other employees not herein named	Present 198 Proposed (By UC/AC) _____ 4b Is This Petition Supported By 30% or more of the employees in the Unit? _____Yes _____No

5a. _____ Request for recognition as Bargaining Representative was made on _____ (Month, day, year) and Employer declined recognition on or about _____ (Month, day, year) (If no reply, so state)

5b. _____ Petitioner is currently recognized as Bargaining Representative and desires certification under the act.

6. Recognized or Certified Bargaining Agent (If there is none, so state)

NAME	AFFILIATION
ADDRESS	DATE OF RECOGNITION OR CERTIFICATION

7. Date of Expiration of Current Contract, If Any (Show month, day, and year)

8a. Is There Now a Strike or Picketing at the Employer's Establishment(s) Involved?
_____Yes _____No

8b. If So, Approximately How Many Employees are Participating?

8c. The Employer Has Been Picketed By or On Behalf of Local Union No. 274 (Insert Name), a Labor Organization, of 1450 South 27th Avenue, Phoenix, AZ (Insert Address) Since _____ (Month, day, year)

9. Organizations or Individuals Other than Petitioner (And Other Than Those Named in Item 8) Which Have Claimed Recognition As Representatives and Other Organizations and Individuals Known to Have a Representative Interest in Any Employees in the Unit Described in Item 5 Above. (If None, So State)

NAME	AFFILIATION	ADDRESS	DATE OF CLAIM (Required only if Petition is filed by Employer)

December 3, 19

I declare that I have read the above petition and that the statements therein are true to the best of my knowledge and belief.

J. A. Wood Co.-Vista Inc.
(Petitioner and Affiliation, if any)

By _____ Attorney
(Signature of Representative or person filing petition) Jon L. Ryl (Title, if any)

by David B. Castro, Secretary/Treasurer of Local #1973; that said letter advised that the said Teamster organization represented a majority of the field employees; that a copy of said letter is attached hereto and hereby incorporated by reference as Exhibit "A". That your petitioner does not believe that said Teamster organization nor any other labor organization represents a majority of its field employees.

That on or about the 18th day of March, 1975, your petitioner received a letter from the same Union organization whose name is set forth above relating to your petitioner's truck drivers, stitchers and and folders; that a copy of said letter is attached hereto and hereby incorporated by reference as Exhibit "B"; that your petitioner does not believe that said Teamster organization, or any other labor organization, represents the majority of its truck drivers, stitchers and folders.

That commencing on the 24th day of March, 1975, the said Teamster organization and/or its affiliates have engaged in picketing, harassing and otherwise interfering with your petitioner's farming operations in Yuma County, State of Arizona; that such conduct consists of an unfair labor practice under the present Agriculture Relations Act of the State of Arizona; that your petitioner hereby requests an immediate investigation and election pursuant to the terms of said Agriculture Relations Act and further requests an immediate determination be made by secret ballot to determine whether or not the field employees or the

truck drivers, stitchers and folder employees of your petitioner desire to belong to the above-mentioned Union or any other union.

The general nature of your petitioner (Employer's) business is growing lettuce and cantaloupes in Yuma County, Arizona.

Petitioner's description of the bargaining unit which should be applicable is all field employees of petitioner engaged in the growing and harvesting of lettuce and cantaloupes on petitioner's lands located in Yuma County, Arizona; petitioner further alleges that the number of employees engaged in said union amounts to approximately 300 persons; that the above-named Union, whose address is set forth in the exhibits attached hereto, and the persons making such claims on behalf of said Union are set forth in Exhibits "A" and "B" attached hereto and hereby incorporated by reference; that your petitioner has no contracts with any labor organization or other representatives of the employees; that your petitioner is unable to state whether or not the activity of the aforementioned Union constitutes a strike, but there is picketing and harassing such as slashing of tires and puncturing of tires, threats from the Union to employees of your petitioner now in progress, and such activity has commenced on or about the 24th day of March, 1975, and has continued to the date of this petition.

That your petitioner is currently in the process of growing approximately 700 acres of cantaloupes in Yuma Valley, Yuma County, Arizona; that your petitioner is also currently engaged in harvesting the remainder of some 2,000 acres of a lettuce crop; that both of said crops have and do involve field employees,

truck drivers, stitchers and folders.

That your petitioner is informed and believes and, therefore, alleges upon information and belief that the unfair labor practices now being conducted by the above-mentioned Union and persons will continue and requests said Board at the time of any investigation to determine the nature and extent of such unfair labor practices now being conducted against petitioner.

That your petitioner requests immediate action and relief from the above-entitled Board concerning all its field workers, truck drivers, and other agricultural employees engaged in the growing, production and harvesting of said lettuce and cantaloupe crops.

That your petitioner requests the above-entitled Board to determine that the appropriate bargaining unit, pursuant to the Agriculture Relations Act, be all of the agricultural workers, truck drivers, stitchers and employees of petitioner engaged in the production, growing and harvesting of said lettuce and cantaloupe crops.

Respectfully submitted,

G & S PRODUCE CO., INC., an
Arizona corporation

By_____
John C. Snyder, President

ROLLE, JONES, BENTON & COLE

By _____
F. Keith Benton
Attorneys for Employer

STATE OF ARIZONA }
County of Yuma } ss

JOHN C. SNYDER, being first duly sworn according to law deposes and says: That he is the President of G & S Produce Co., Inc., an Arizona corporation, and that he makes this verification for and on behalf of said corporation; that he has read the foregoing Petition and knows the contents thereof to be true, except for those allegations made upon information and belief, and as to those allegations he believes them to be true.

_____
John C. Snyder

SUBSCRIBED AND SWORN TO before me this 25th day of March, 1975.

_____
Notary Public

My Commision Expires:
May 3, 1977

[Letterhead of Sales Drivers and Helpers Local Union No. 274]

January 26, 1975

Griffin & Snyder Company
Somerton, Arizona 85300

Dear Sirs:

Our representatives have secured the signatures of a majority of your field employees on petitions demanding that the union be recognized as their collective bargaining agent.

This letter shall serve as notice of this majority status, and our desire to meet with you to discuss the future negotiation of a contract to cover these employees.

We expect that you will be in touch with our area representatives within 72 hours from the receipt of this letter.

Contact either Roy Mendoza, John Macias, Dan Oligario or Domingo Iames, at the below address or address shown on the letterhead to establish a meeting:

Teamsters Local #274
Phone: 602-627-2036
130 Main Street
P. O. Box 1004
Somerton, Arizona 85300

Sincerely yours,

David B. Castro
Secretary/Treasurer
Local 1973

"EXHIBIT A"

[Letterhead of Sales Drivers and Helpers Local Union No. 274]

March 17, 1975

G. S. Produce Company, Inc.
County 17
Somerton, Arizona 85350

Dear Sir:

On behalf of the Western Conference of Teamsters Agricultural Division and it's affiliated Local Union 274, we herewith serve notice that we represent a majority of your truck drivers, stitchers and folders and hereby demand recognition as their exclusive bargaining agent. We are willing to demonstrate our majority standing in any reasonable fashion.

This letter shall also serve as a request to meet at your earliest convenience for the purpose of negotiating the Collective Bargaining Agreement.

Please contact the under signed to establish a mutually agreeable date to commence negotiations.

Sincerely yours

JOHN T. BLAKE
Secretary-Treasurer

cc: Ralph Cotner
Rolle, Jones, Benton & Cole

"EXHIBIT B"

EXHIBIT 11A

EXHIBIT A
STATE OF ARIZONA

THE AGRICULTURAL EMPLOYMENT RELATIONS BOARD
PHOENIX, ARIZONA

UNITED FARM WORKERS OF AMERICA, AFL-CIO, a labor organization	Case Nos. C2-175 C3-175 C6-175 C7-175 C8-175

William A. Gibney,
for the General Counsel.

James Rutkowski & William DeBiase of Phoenix, Arizona,
for the Respondent, United Farm Workers of America, AFL-CIO

J. W. CHERRY, Trial Examiner:

Based on charges filed on January 23, 1975 by Roy's Arizona Pharmacy, Tucson, Arizona; Pueblo Liquor Stote, Tucson, Arizona, and Fritz's Liquors, Tucson, Arizona, and on charges filed on January 24, 1975 by Market Spot, Tucson, Arizona, and Super City Department Stores, Tucson, Arizona, the Complaints herein were issued on February 27, 1975, alleging that the United Farm Workers of America, AFL-CIO, hereinafter referred to as the Union or Respondent, violated Sections 23-1385(B)(6), 23-1385(B)(7) and 23-1381 of the Arizona Revised Statutes, hereinafter referred to as the Act.

On March 10, 1975, counsel for the Respondent filed a Motion to Dismiss, and pursuant to notice, a hearing was held in Phoenix, Arizona, on April 10, 1975, before the undersigned, duly designated Trial Examiner. Briefs were received from the General Counsel and the Respondent and oral argument was presented by the General Counsel and Respondent's attorney.

The Respondent contends that the conduct complained of constitutes protected free speech. Not having the benefit of a full record, but relying on the statements of General Counsel and Counsel for the Respondent as to some of the activities of the pickets or pamphleteers, it would appear that pamphlets were passed out to prospective customers, that pickets marched in front of the various establishments carrying signs requesting customers not to buy Gallo wine, that the pickets requested customers not to patronize the various business establishments and that one of

the objectives of Respondent was to cause any or all of the prospective customers to cease doing business with the charging parties.

The Arizona Agricultural Employment Relations Act is similar in many respects to the National Labor Relations Act and the interpretations of the NLRA are most helpful in this proceeding.

In *Hoffman v. Cement Masons Union, etc.*, 468 F.2d 1187, cert. denied, 411 U.S. 986, the Ninth Circuit Court held that a Union may follow the struck product into the secondary establishment, only if such secondary boycott does not attempt to influence customers to completely cease all transactions with the neutral employer. The Court stated at p. 1191,

> "Asking the public to totally boycott a neutral, is tantamount to a demand that he cease dealing with the primary object of the Union's grievance. It is just such activity which the Act prohibits."

The Court further stated:

> "Peaceful consumer picketing to shut off all trade with the secondary employer unless he aids the Union in its dispute with the primary employer, is poles apart from such picketing which only persuades his customers not to buy the struck product." Tree Fruit, 55 L.R.R.M. 2961, 377 U.S. 58, 84 S.Ct. 1063.

I therefore find that the acts alleged in the complaint are not an infringement of Respondent's protected free speech.

The Respondent contends that the decision of the Superior Court in *Safeway v. United Farm Workers*, C-278338, is *res judicata* to the instant proceedings.

In *NLRB v Denver Building and Construction Trade Council*, 341 U.S. 675 (1951), the Supreme Court of the United States considered the same contensions under similar provisions of the L.M.R.A. and held that the refusal of the District Court to issue an injunction on the basis that no violation of the National Labor Relations Act occurred is not *res judicata* of any issue later to be resolved by the Board. In addition to the remedies available before the Board, the injured party may either before or after a Board finding of an unfair labor practice proscribed by Section 8(b)(4) of the L.M.R.A. maintain an action under Section 303 of the L.M.R.A. in Federal District Court for damages resulting from any activity or conduct defined as an unfair labor practice in Section 8(b)(4) of the L.M.R.A.

Thus, in *International Longshoremen's and Warehousemen's Union v. Juneau Spruce Corporation*, 342 U.S. 237, the Supreme Court of the United States held that the administrative remedy through the NLRB and the remedy of damages under Section 303 are independent of each other and could be pursued simultaneously. The NLRB is given primary jurisdiction to determine whether or not there have been unfair labor practices, and if so, to fashion appropriate remedies, while the function of the Court is to award damages suffered as a result of certain activities which were also unfair labor practices. The NLRB, and in this instance the Agricultural Employment Relations Board, cannot award damages. The Court can. Moreover, Section 301 of the Labor Management Relations Act permits suits for violation of contracts between an employer and a labor organization. In *Smith v. Evening News Association*, 371 U.S. 195, the Supreme Court of the United States held that:

> "The authority of the Board to deal with an unfair labor practice which also violates a collective bargaining contract is not displaced by Section 301 but it is not exclusive and does not destroy the jurisdiction of the Courts in suits under § 301."

Section 23-1393 of the Arizona Agricultural Employment Relations Act likewise permits a party aggrieved by an alleged violation of the Act to seek damages which result from such violation, the party may request and the Court may grant just and appropriate injunctive relief and damages. By Section 23-1390 of the Arizona Agricultural Employment Relations Act, the Agricultural Employment Relations Board is given power and authority to prevent any person from engaging in unfair labor practices. The Board is also given the power and authority to conduct hearings and determine whether or not unfair labor practices have been committed. If it finds that an unfair labor practice has been committed, the Agricultural Employment Relations Board is empowered to issue an order requiring such person to decease and desist from such unfair labor practice and to take such affirmative action, including reinstatement of employees with or without back-pay, as will effectuate the policies of the Act. The Agricultural Employment Relations Board is given primary jurisdiction over unfair labor practices and the remedies therefor. The Arizona Agricultural

Employment Relations Act makes the Agricultural Employment Relations Board, not the Court, responsible for determining whether or not an unfair labor practice has been committed, and if so, to fashion the appropriate remedy. The awarding of damages, if any, is for the Court, not the Board. The Court is also empowered to hear and decide petitions for injunctive relief either by the party aggrieved or by the Board. The jurisdiction of the Agricultural Employment Relations Board is obviously different from that of the Court and neither should encroach upon the jurisdiction of the other.

I therefore find that the Superior Court proceeding is not *res judicata* to the action pending before the Agricultural Employment Relations Board.

IT IS HEREBY ORDERED that the Respondent's Motion to Dismiss be denied.

DATED this 23rd day of April, 1975.

J. W. Cherry, Trial Examiner

EXHIBIT 11B

EXHIBIT B

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA IN AND FOR THE COUNTY OF MARICOPA

UNITED FARM WORKERS OF AMERICA, AFL-CIO, a Labor Organization, RICHARD COOK, PAT BONNER and PETER KERR, *Plaintiffs,* vs. AGRICULTURAL EMPLOYMENT RELATIONS BOARD and SAFEWAY STORES, INC., real party in interest. *Defendants*	No. C288257 FINDINGS OF FACT CONCLUSIONS OF LAW, and PRELIMINARY INJUNCTION

This cause coming to be heard on the motion of the plaintiffs for a preliminary injunction; and due notice having been given to defendants who appeared through counsel and the Court having read the verified Complaint and considered the memoranda and argument of counsel:

FINDINGS OF FACT

1. Plaintiff United Farm Workers of America (Union) is a labor organization which seeks to represent agricultural employees in collective bargaining with agricultural employers. Plaintiffs Richard Cook, Pat Bonner and Peter Kerr are agents or representatives of the Union.

2. The Agricultural Employment Relations Board (Board) is an administrative Board established by the Arizona Agricultural Employment Relations Act (Act), ARS §§ 23-1381 through 23-1395.

3. Safeway Stores, Inc., (Safeway) is a Maryland corporation which operates retail stores in the state of Arizona for the purpose of selling food and related products to the public.

4. On June 12, 1973, Safeway filed a complaint against the Union in Maricopa County Superior Court, No. C278338. This complaint arose from the Union's boycott and picketing activities at several Safeway stores in Tucson and Phoenix.

5. Safeway's complaint in the above action alleged that the Union had committed several unfair labor practices prohibited by ARS 23-1385(B) of the Act. Safeway invoked jurisdiction of the Superior Court under ARS § 23-1393(A) of the same Act and sought both injunctive relief and damages.

6. Litigation involving evidentiary hearings, legal memorandum, plus oral arguments and rehearings took place in action C278338 between June 15, 1973 and November 21, 1973. Motions and Applications to Intervene submitted by the Board and Arizona Grape Growers Association in case No. 278338 were denied

by the Superior Court. These proceedings culminated in the preliminary injunction entered December 13, 1973. This injunction was made permanent by stipulation of the parties on February 27, 1974.

7. In arriving at its decision in No. C278338 the Maricopa County Superior Court ruled upon the allegation by Safeway that the Union violated provisions found in ARS § 23-1385(B).

8. On February 4, 1974 the Board through its executive secretary notified the Union that it had scheduled a hearing for February 19, 1974 in its case No. 3-673.

9. The Board's Complaint No. 3-673 was issued August 14, 1973 pursuant to the authority of ARS § 23-1390(B) after the filing of charges with the Board by Safeway on June 12, 1973. Both Safeway's charge and the Board's complaint allege violations of the same provisions of ARS § 23-1385 that were alleged in the Superior Court complaint.

10. On February 11, 1974 the Union filed the present Complaint in Special Action to enjoin the Board from hearing the complaint, claiming that the Board was precluded from doing so by both the doctrines of concurrent jurisdiction and *res judicata*.

11. On February 11, 1974 the Union filed the present Complaint in Special Action to enjoin the Board from hearing the complaint, claiming that the Board was precluded from doing so by both the doctrines of concurrent jurisdiction and *res judicata*.

CONCLUSIONS OF LAW

1. This Court exercises its jurisdiction in this matter under the Rules of Procedure for Special Action.

2. A.R.S. § 23-1393(A) grants jurisdiction to the Superior Court of the State of Arizona in the following language:

> "A. Any person who is aggrieved or is injured in his business or property by reason of any violation of this article, or violation of an injunction issued as provided in this section, may sue in any superior court having jurisdiction of the parties for recovery of any damages resulting from such unlawful action, regardless of where such unlawful action occurred and regardless of where such damage occurred, including costs of the suit and reasonable attorney fees. Upon the filing of such suit the court shall also have jurisdiction to grant such injunctive relief or temporary restraining orders as it deems just and proper. Petitions for injunctive relief or temporary restraining orders shall be heard expeditiously. Petitions for temporary restraining orders alleging a violation of § 23-1385 shall be heard forthwith and if the petition alleges that substantial and irreparable injury to the petitioner is unavoidable such temporary restraining orders may be issued pursuant to Rule 65 of the Arizona Rules of Civil Procedure."

3. ARS § 23-1390 grants to the Board jurisdiction to also determine whether or not any violations of unfair labor practices listed in ARS § 23-1385 have occurred. The Board is empowered to issue cease and desist orders against such violations and to order such affirmative action as will effectuate the Act.

4. Safeway properly invoked the jurisdiction of the Superior Court under ARS § 23-1393(A) in its Action No. C278338 on June 12, 1973. All parties to that action are now bound by the permanent injunction entered therein.

5. The Act gives the Superior Court and the Board concurrent jurisdiction to determine if the provisions of ARS § 23-1385 have been violated. The doctrine of concurrent jurisdiction now bars the Board from assuming jurisdiction of a controversy over which the Superior Court obtained jurisdiction on June 12, 1973.

6. The Board cannot rehear this same controversy for the second reason that the permanent injunction entered in C278338 now makes the controversy *res judicata*. The permanent injunction entered in C278338 constitutes a final decision on the merits of all matters raised in Complaint No. 3-673.

PRELIMINARY INJUNCTION

IT IS ORDERED, ADJUDGED AND DECREED that pending further order of this Court, the defendants AGRICULTURAL EMPLOYMENT RELATIONS BOARD and SAFEWAY STORES, INC., their respective officers, agents, representatives, employees and all other persons in active concert and participation with the, be and they hereby are restrained and enjoined:

(a) from conducting or participating in any proceedings of whatever nature in Case No. 3-673 or any case involving the dispute contained therein before the defendant Agricultural Employment Relations Board.

(b) from assuming jurisdiction or conducting any proceedings regarding any dispute where any superior court of the state of Arizona has assumed jurisdiction over that same dispute between the real parties in interest.

Providing, however, that nothing herein shall be deemed to preclude any party from exercising its right of appeal or special action, and

This being a case of first impression involving a substantial question of statutory construction and legislative intent which may most appropriately be determined by an appellate court, the Court recommends that the parties use the special action procedures to test the validity of this Order.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the plaintiffs file a bond in the sum of $50.

Done in Open Court this 3rd day of April, 1974.

Hon. Ed. W. Hughes
Judge of the Superior Court

EXHIBIT 11C

THE STATE OF ARIZONA
THE AGRICULTURAL EMPLOYMENT
RELATIONS BOARD
PHOENIX, ARIZONA

UNITED FARM WORKERS OF AMERICA, AFL-CIO, a labor organization, Respondent	Case Nos. C2-175
Williams A. Gibney General Counsel, Phoenix, Arizona	C3-175 C6-175 C7-175
JAMES RUTKOWSKI and WILLIAM DEBIASE of Phoenix, Arizona for the Respondent	C8-175

J. W. CHERRY, Trial Examiner:

Based on charges filed on January 23, 1975, by Roy's Arizona Pharmacy, Tucson, Arizona; Pueblo Liquor Store, Tucson, Arizona, and Fritz's Liquors, Tucson, Arizona, and on charges filed on January 24, 1975, by Market Spot, Tucson, Arizona, and Super City Department Stores, Tucson, Arizona, the complaints herein were issued on February 27, 1975, alleging that the United Farm Workers of America, AFL-CIO, hereinafter referred to as the Union or Respondent, violated Sections 23-1385(B)(6), 23-1385(B)(7) and 23-1381 of the Arizona Revised Statutes, hereinafter referred to as the Act.

An answer was filed by the Respondent denying the allegations of the complaints and alleging Section 23-1385(B)(7) to be unconstitutional, the decision in *Safeway Stores, Inc. v. United Farm Workers,* Superior Court, Maricopa County, No. 278338, to be binding in this proceeding under the doctrine of *stare decisis,* and that the petitioner lacks jurisdiction.

On March 10, 1975 Respondent filed a motion to dismiss the complaints. On April 10, 1975 a hearing on said motion was held and the motion was denied by the undersigned Trial Examiner. A hearing on the merits was held in Tucson, Arizona, on May 28, 1975, and the Respondent and its Counsel failed to appear. Testimony was taken from General Counsel's witnesses and the hearing was closed on May 28, 1975.[1]

FINDINGS OF FACT

The Respondent had a labor dispute with the producers of Gallo Wine in California over representation of the farm workers who allegedly are under contract with the Teamsters Union. The Respondent, through its officers, agents and employees, in the latter part of January 1975, approached the charging parties and demanded that they remove the Gallo wine products from their shelves and stop offering it for sale. Respondent threatened that failure to comply with the aforesaid demand would result in picketing of their places of business. The charging parties refused to comply and the Respondent commenced picketing their various places of business. The pickets passed out pamphlets to prospective customers and urged

[1] On motion of General Counsel, the Complaint in C6-175 was withdrawn.

said prospective customers not to purchase Gallo products and not to patronize the stores involved.[2] The above mentioned picketing continued at most of the charging parties places of business for about six weeks or more and the picketing is now going on at other retailers of Gallo wine products in the Tucson area.

In as much as the instant case is the first to go to trial, there is limited precedent to follow and I must look to the Labor Management Relations Act for guidance, since that Act is similar to the Arizona Agricultural Employment Relations Act.

In *Hoffman v. Cement Masons Union, etc.,* 468 F.2d 1187, cert. den., 411 U.S. 986, the Ninth Circuit Court held that a union may follow the struck product into the secondary establishment, only if such secondary boycott does not attempt to influence customers to completely cease all transactions with the neutral employer. Citing the landmark case *N.L.R.B. v. Fruit & Vegetable Packers & Warehousemen, Local 760,* 377 U.S. 58, 84 S.Ct. 1063, 12 L. Ed.2d 129 (1964), the Court stated at page 1191:

> "Asking the public to totally boycott a neutral, tantamount to a demand that he cease dealing with the primary object of the Union's grievance.... It is just such activity which the Act prohibits."

[2] Counsel for Respondent, when urging its motion to dismiss, stated that one of the objects of the picketing was to cause any and all prospective customers to cease doing business with the charging parties.

The Court further stated:

"Peaceful consumer picketing to shut off all trade with the secondary employer unless he aids the union in its dispute with the primary employer, is poles apart from such picketing which only persuades his customers not to buy the struck product."

The Union's consumer boycott against a product (Gallo Wine), by picketing customers' entrances to stores selling Gallo Wine with placards and handbills urging the public not to buy the wine, even if it reduces the stores' sales and causes them to drop the wine as a poor seller, is not an unfair labor practice under the L.M.R.A. But when the avowed object of the picketing, as in the instant case, is to cause prospective customers to cease doing business with the stores in question, the picketing becomes illegal.

In the case at bar, we do not have a situation where the Respondent was merely trying to dissuade the customers of a business establishment to cease purchasing a certain product, but on the contrary we have the Respondent picketing with the admitted object of causing the customers to cease doing business with the charging parties.

The evidence clearly reflects that the Respondent, through its officers, agents and representatives, threatened the charging parties with picketing if they failed to comply with their demands, viz. stop selling Gallo Wine, and remove it from their shelves and by urging customers and prospective customers not to patronize the charging parties' stores and with the admitted object of causing their customers to cease doing any business with the charging parties, who are secondary

employers and who have no labor dispute with the Respondent, but merely purchase the primary employers' product through a local distributor.[3]

CONCLUSIONS OF LAW

By picketing and oral communications with customers and prospective customers of Roy's Arizona Pharmacy, Pueblo Liquor Stores, Market Spot and Super City Department Stores, not to shop at said stores, Respondent has engaged in, and is engaging in, unfair labor practices within the meaning of Section 23-1385(B)(6) of the Arizona Revised Statutes.

By attempting to induce, encourage, restrain or coerce executives and management personnel of Roy's Arizona Pharmacy, Pueblo Liquor Store, Market Spot and Super City Department Stores to make a management decision not to handle, sell or distribute Gallo Wine, Respondent has engaged in unfair labor practices within the meaning of Section 23-1385(B)(7) of the Arizona Revised Statutes.

REMEDY

Having found that the Respondent has engaged in unfair labor practices in violation of Sections 23-1385(B)(6), 23-1385(B)(7) and 23-1381 of the Arizona Revised Statutes, I recommend that it be required to cease and desist therefrom.

---

[3] The drafters of the Agricultural Employment Relations Act failed to include a proviso permitting lawful product boycotts, which may taint its constitutionality, but it is not the Trial Examiner's prerrogative to rule on the constitutionality of the act in a quasi judicial proceeding.

ORDER

Respondent, United Farm Workers of America, AFL-CIO, its officers, agents and respresentatives, shall:[4]

Cease and desist from picketing and urging customers and prospective customers not to shop at Roy's Arizona Pharmacy, Pueblo Liquor Stores, Market Spot and Super City Department Stores, or any other employers in the State of Arizona.

Cease and desist from inducing, encouraging, restraining and coercing executives and management personnel of Roy's Arizona Pharmacy, Pueblo Liquor Store, Market Spot and Super City Department Stores or any other employers in the State of Arizona, not to handle, sell or distribute Gallo Wine.

DATED AT Phoenix, Arizona this 9th day of July, 1975.

J. W. CHERRY
Trial Examiner

[4] In the event no exceptions are filed, the findings, conclusions, and recommended order herein shall be adopted by the Board and become its findings, conclusions and order.

EXHIBIT 11D

Exhibit D

THE STATE OF ARIZONA
THE AGRICULTURAL EMPLOYMENT RELATIONS BOARD
PHOENIX, ARIZONA

UNITED FARM WORKERS OF AMERICA, AFL-CIO, a labor organization, Respondent	Case Nos. C2-175 C3-175 C7-175 C8-175

EXCEPTIONS TO DECISION OF THE TRIAL EXAMINER

Pursuant to S 107, Rules and Regulations of the Agricultural Employment Relations Board, Respondent files the following exception to the decision of the trial examiner for the hearing conducted on May 28, 1975.

1. Section 23-1385 (B)(6) of the Agricultural Employment Relations Act is unconstitutional under the First and Fourteenth Amendments.

2. Section 23-1385 (B)(7) of the Agricultural Employment Relations Act is unconstitutional under the First and Fourteenth Amendments and has been so held in *Safeway Stores, Inc. v. United Farm Workers*, Superior Court, Maricopa County, No. 278338, and *Mary J. Kennard, et al. v. United Farm Workers*

Union, et al., Superior Court, Pima County, No. 154758.

3. The decisions in *Safeway*, supra, and *Mary J. Kennard*, supra, were binding on the trial examiner under the doctrine of *stare decisis*.

4. Pamphlets distributed by supporters of the United Farm Workers Union in the vicinity of the stores which were the subject of the hearing did not urge consumers to boycott these stores.

5. The decision of the trial examiner was unconstitutional under the First and Fourteenth Amendments

6. The hearing violated an injunction issued in *United Farm Workers of America, et al. v. Agricultural Employment Relations Board, et al.*, Superior Court, Maricopa County, No. C288257.

7. The Agricultural Employment Relations Board lacks subject matter jurisdiction to grant the extent of relief suggested by the Examiner. Respondents incorporate as part of and in support of these exceptions all prior Motions and Memoranda filed here in, as well as testimony presented before the Hon. Lillian Fisher.

Dated this 21 day of July, 1975.

William DeBiase
Attorney for Respondent

Copy of the foregoing
hand-delivered this
21 day of July, 1975, to:

William Gibney
General Counsel
1688 W. Adams
Room 114
Phoenix, Arizona 85007

William DeBiase
Attorney for Respondent

EXHIBIT 11E

Exhibit E

THE STATE OF ARIZONA
THE AGRICULTURAL EMPLOYMENT
RELATIONS BOARD
PHOENIX, ARIZONA

UNITED FARM WORKERS OF AMERICA, AFL-CIO, a labor organization, *Respondent.*	Case Nos.: C2-175, C3-175 C7-175, C8-175 DECISION OF THE BOARD AND ORDER

Pursuant to R4-2-04 B, Rules and Regulations of the Agricultural Employment Relations Board, it is the unanimous decision of the Board at a meeting of the Board on August 13, 1975, at Phoenix, Arizona to issue its Order regarding the decision of the Trial Examiner, J. W. Cherry, dated July 9, 1975, in the above-entitled matters as follows:

With reference to Exception Number 1 filed by Respondent, the Board has no jurisdiction as to the constitutionality of Section 23-1385 (B)(6) of the Agricultural Employment Relations Act.

With reference to Exception Number 2 the Board has no jurisdiction as to the constitutionality of Section 23-1385(B)(7) of the Agricultural Employment Relations Act.

With reference to Exception Number 3 the Board denies that the decisions in *Safeway Stores, Inc., v. United Farm Workers* and *Mary J. Kennard, et al. v. United Farm Workers Union et al.*, were binding on the Trial Examiner under the doctrine of *stare decisis*.

With reference to Exception Number 4, the Trial Examiner's decision states: "the pickets passed out pamphlets to prospective customers and urged said prospective customers not to purchase Gallo products and not to patronize the stores involved." The Trial Examiner did *not* say that the pamphlets themselves urged consumers to boycott these stores; however respondent's counsel did state that one of the objects of the picketing was to cause prospective customers to cease doing business with the charging parties (see

page 11 of the transcript of Formal Hearing on Respondent's Motion to Dismiss) and the Board therefore upholds the Trial Examiner with regard to this point.

With reference to Exception Number 5, the Board has no jurisdiction to determine that the decision of the Trial Examiner was unconstitutional under the First and Fourteenth Amendments.

With reference to Exception Number 6, the Respondents filed a Petition on June 6th to hold the Board in Contempt of Court for holding the hearing allegedly in violation of the injunction issued in *United Farm Workers of America, et al. v. Agricultural Employment Relations Board, et al*, Maricopa County Case No. C288257; this was denied by Judge Hughes on or about July 19, 1975; therefore the Board denies this exception.

With reference to Exception Number 7, the Board orders the Trial Examiner's decision to be modified as follows:

On Page five, line three, the phrase, "or any other employers in the State of Arizona" shall be deleted;

On Page five, line seven, the words, "or any other employers in the State of Arizona" shall be deleted.

BY ORDER OF THE BOARD at Phoenix, Arizona this 13th day of August, 1975.

MILTON G. SANDERS
CHAIRMAN

COPY of the foregoing mailed
this 21st day of August, 1975, to:

William DeBiase
Attorney for Respondent
P. O. Box 1621
Phoenix, Arizona 85001

By _____
Executive Secretary

EXHIBIT 12

IN THE SUPERIOR COURT
OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF PIMA

EXHIBIT F

LILLIAN S. FISHER
JUDGE, of the Superior Court

THE AGRICULTURAL EMPLOYMENT RELATIONS BOARD, *Plaintiff* vs. UNITED FARM WORKERS OF AMERICA, AFL-CIO, et al., *Defendants*	No. 153789 Date April 4, 1975

Plaintiff's Attorney | Defendants' Attorneys

MINUTE ENTRY
UNDER ADVISEMENT:

The Court makes the following findings of fact:

1. That the Deft. United Farm Workers is a labor organization which seeks to represent agricultural employees in collective bargaining with agricultural employers and the other Defts. are persons acting for and on behalf of said union.

2. That Roy's Arizona Pharmacy, 647 S. 6th, Tucson, Az., Pueblo Liquor Store, 201 N. Park, Tucson, Az. and Super City Department Stores, 505 E. 17th St., Tucson, Az., are all retail establishments that come within the purview of A.R.S. 23-1321 and 23-1381 and those following in that they are associations engaged in the sale of agricultural products.

3. That each of these organizations sells at retail products marketed by Gallo Wines under various names.

4. That the United Farm Workers contends that the farmers employed by Gallo have been denied the right to choose their own union.

5. That the union through its various representatives has organized a campaign in an effort to persuade the public (a) not to shop at any of the stores that handle Gallo Wines and (b) not to purchase any of the Gallo products.

6. That the union through its agents and representatives is participating, on a regular basis, in picketing the aforementioned stores, that at each of those locations they distribute literature and carry flags and placards, and that they approach passersby, potential consumers, customers of the store and other persons in the immediate area.

7. That the pickets have been peaceful and that the union has instructed them to behave in a peaceful manner.

8. That the pickets have on occasion blocked doorways and interfered with the ingress and egress of potential customers to the stores.

The Court makes the following conclusions of law:

1. Peaceful consumer picketing that is designed to shut off all trade with a secondary employer unless that employer aids the union in its dispute with the primary employer is a forbidden activity.

2. Peaceful consumer picketing that only persuades a customer not to buy the struck product is a lawful activity protected by the First Amendment.

3. A union appeal to the public at a secondary site not to trade at all with a secondary employer reaches other goods of the secondary employer and is unlawful.

4. All peaceful picketing at a secondary site that is directed only at the struck products is lawful.

5. Secondary boycotts include picketing and boycotts directed at consumers as well as employees.

6. A union has a right to appeal to the general public as consumers for the public's assistance in its labor dispute and it is not a secondary boycott to persuade a customer not to buy a particular product.

7. It is unlawful to threaten, coerce or restrain a customer or an employee in any secondary boycott.

8. It is unlawful to ban peaceful picketing.

9. Pltf. is entitled to a preliminary injunction restraining the Defts. from conducting a secondary boycott at any of the above-named stores when such boycott extends to attempts at dissuading customers from shopping in the store at all.

10. The Pltf. is not entitled to any injunction restraining the Defts. from urging people not to buy Gallo products.

11. The Pltf. is entitled to a preliminary injunction restraining the Defts. from any attempts to hinder or obstruct persons from entering the business premises of the above-named stores.

12. Pltf. is not entitled to a preliminary injunction which in any way bars the Deft. from picketing or boycotting on public property, provided the boycotts or pickets are not directed against all of the products sold in the store.

WHEREFORE,

IT IS ORDERED that the Deft. United Farm Workers of America, its officers, agents, servants, employees, representatives and all other persons acting for and on their behalf are hereby, until further order of the Court or other agency entitled to issue superceding orders, restrained and enjoined as follows:

1. From conducting a secondary boycott on or near the premises of the above-named stores, which boycott would extend to all the products of said store. This injuction does not prohibit picketing by use of placards, handbills, flags, oral communication or any other media which specifically relates to the Gallo products or products produced under any other name by the Gallo Wine Company.

2. There shall be no restriction on the number of persons who may picket at any one location, provided that said pickets do not disturb the peace.

3. That the pickets shall at no time interfere with the right of anyone to enter or leave the above-named stores through any entrance or exit.

4. That the pickets shall not interfere with any person's attempt to get in or out of his car in any of the adjacent parking lots.

5. The placards, signs, flags or other materials carried near the business premises of the above-named stores may be specifically directed to any of the Gallo products, may urge the public not to purchase any of the Gallo products, but shall not urge upon the public not to shop at the store at all.

6. That the picketing persons shall not use the parking lot of any of the above-named stores nor shall they interfere with the movement in and out of the store's premises of any person intending to shop at the store or employees of the store or persons delivering merchandise to the store.

7. That the pickets shall behave in a peaceful, lawabiding manner at all times.

8. That this injuction supersedes all prior injunctions and orders.

9. That the Pltf's. attorney prepare a written form of order.

cc: William A. Gibney
1645 W. Jefferson
Phoenix, Az. 85003
James Rutkowski and William DeBiase
P. O. Box 1621
Phoenix, Az. 85001
Court Admin.
Hon. Lillian S. Fisher
U/A

B. Chadwick, Deputy Clerk.

STIPULATION REGARDING HARVEST AND PRE-HARVEST SEASONS

(Title Omitted in Printing)

The most labor-intensive operations in Arizona agriculture are the growing and harvesting of seasonal fruits and vegetables, accounting for approximately 75% to 80% of the total man days of work performed by agricultural employees in Arizona during a year. Of the total man days worked in Arizona agriculture, lettuce accounts for approximately 20%; citrus accounts for approximately 22%; grapes and desiduous trees account for approximately 5%-10%; vegetables, other than lettuce, including green onions, dry onions, carrots, cauliflower, broccoli, cabbage, etc., account for approximately 20%; and cantaloupes (melons) account for approximately 5% to 10%.

The full growing season for each of these crops includes the harvest operation itself, plus various pre-harvest operations, which vary according to the crop, but include operations such as thinning, weeding, etc. While the total man days of work performed on pre-harvest operations sometimes exceeds the total of the harvest (because pre-harvest operations generally occur intermittently over a longer period of time), the highest concentration of workers employed by any single grower will be during the harvest season. The harvest season usually requires two or three times as many employees as required for the pre-harvest operations, with over 50% of the harvest employees employed only during the harvest.

Because of differences in crops, areas of the state, employer practices and size of operation, market conditions, weather and other factors, it is difficult to generalize about the length of the harvest and pre-harvest seasons. Frequently, but not always, there is a time within the harvest season in which 50% or more of the highest number of agricultural employees employed at any time during the harvest are employed. This may be referred to as the "peak harvest." In some crops, there are also periods (ranging from one day to over a week) in which there may be little or no harvest activity. The harvest and pre-harvest seasons for each of the major seasonal crops listed above will vary among different individual growers during each season and for each individual grower from season to season depending upon the factors noted above. Examples of pre-harvest and harvest seasons are attached to and made a part of this stipulation. Very generally they may be summarized as follows:

A. *Lettuce.* The pre-harvest activities include thinning, doubling and weeding, and usually last from six to ten weeks, ending just before the harvest. There are two basic kinds of lettuce operations in Arizona. About 28% of the lettuce is harvested over a five to six month continuous season in the Yuma area. About 72% of the lettuce is harvested in separate spring and fall harvests. These operations are located in various parts of Arizona, inlcuding the Phoenix area, the Yuma area, the Marana-Eloy area and the Wilcox area. For these operations, Plaintiffs believe the length of the full harvest season for a particular grower generally ranges from four to seven weeks; while Defendants and Intervenors believe it generally ranges from four

to eight weeks, with the most being six to seven weeks. Plaintiffs believe there is usually a peak harvest period (in which at least 50% of the highest number of employees employed at any time during the harvest are employed), which generally lasts from three to four weeks. Defendants and Intervenors believe most lettuce harvests do not have a peak season; but that, when they do, it generally lasts from four to six weeks.

B. *Citrus,* including lemons, oranges, grapefruits. Citrus is harvested in Arizona over a period of ten to eleven months, from about September 1 to mid-July. Most of the growers contract for the harvesting of their fruit with a packing house engaged in harvesting operations which keeps its crews busy on a continuous basis throughout the harvest, even though the crews may move within a localized area from one orchard to another and back again.

C. *Grapes.* The harvest of grapes occurs once a year from about mid-June to mid or late-July. The harvest season for any individual grower lasts from four to six weeks, with most lasting about five weeks. There is usually a peak harvest period within the season (in which 50% or more of the highest number of employees employed during the harvest season will be employed) which generally lasts from three to four weeks.

The cultivation of grapes consists of several pre-harvest operations, such as pruning, tying, thinning, girdling and tipping, performed intermittently from mid-December to around the first of June. At an average size ranch, the highest number of workers employed in any pre-harvest operation will range from 100 to 150 employees; and the highest number of

workers employed during the peak harvest season will range from 300 to 500 employees.

D. *Vegetables,* including green onions, dry onions, cauliflower, carrots, broccoli, etc. Vegetables other than lettuce include crops with widely varying harvest seasons. It is almost impossible to generalize about the length of harvests because practices vary so greatly. However, the following are examples of harvest seasons for two of the crops; green onions and dry onions. Most vegetable growers will have several types of vegetables each year, with the harvest spaced or staggered to some extent. Employers do not always have each new crop ready for harvest at the end of the harvesting of the preceding crop. For this reason, and due to different piece rates paid to harvest workers, individual workers may work intermittently for a particular grower for a period of several days or several weeks. Defendants and Intervenors believe (but Plaintiffs do not) that many workers work for a particular grower for several months.

1. Green onions are the most labor intensive crop of the vegetables. They may be harvested up to ten months of the year. Most growers stagger planting of different fields so they may harvest throughout most of the year.

2. The harvest of a field of dry onions usually takes about two to four weeks.

E. *Cantaloupes* (melons) are harvested once a year beginning in early June. Plaintiffs believe the harvest season generally lasts for a period ranging from three to seven weeks, with the peak of the harvest generally lasting two to three weeks. Defendants and Interven-

ors believe the season lasts from five to seven weeks with a peak of about three weeks.

The attached exhibits show the number of employees working in harvest and pre-harvest activities of the five major crops for generally representative growers during 1974, 1975 and 1976. The lettuce growers include one large Yuma grower exemplifying the 28% of the growers who have a single 5½ month harvest (Pasquinelli); and one large (Interharvest), two medium (J. A. Wood and J. R. Norton), and two small (Cactus and Action Produce) growers exemplifying the two-season growers. For citrus, Arizona Citrus Growers, operating in Central Arizona, is an example of a citrus harvester. The three grape growers (Tenneco, Boswell and Bodine) are representative mid-size harvesters. Phoenix Vegetable is an example of a vegetable grower; its green onion experience is shown. In melons, Bodine is representative of the small growers; and Pasquinelli is representative of the large growers.

This stipulation is entered into for the purposes of this case only.

DATED this 17th day of January, 1977.

Respectfully submitted,
JENNINGS, STROUSS & SALMON

By _____
Jon L. Kyl
Larry L. Smith
111 West Monroe
Phoenix, Arizona 85003
Attorneys for Intervenors

_____
James Rutkowski
ACLU Foundation of Southern California
633 South Shatto Place
Los Angeles, California 90005
Attorneys for Plaintiffs

_____
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BRUCE E. BABBITT, ATTORNEY GENERAL

By _____
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Assistant Attorney General
1700 West Washington
Phoenix, Arizona 85007
Attorneys for Defendants

AGRICULTURAL EMPLOYMENT LABOR RELATIONS BOARD

By _____
William A. Gibney
General Counsel
1688 West Adams, Room 114
Phoenix, Arizona 85007
Attorneys for Defendants

LETTUCE

[Letterhead of Pete Pasquinelli]

JANUARY 13, 1977:

GENTLEMEN:

I HEREBY CERTIFY THAT TO THE BEST OF MY KNOWLEDGE, THE FIGURES FOR EMPLOYEES USED IN THE PRE-HARVEST AND HARVEST OF LETTUCE AND PRE-HARVEST AND HARVEST OF CANTALOUPES IN MY ORGANIZATION FOR THE YEAR 1974, ARE TRUE AND CORRECT FROM MY AVAILABLE PAYROLL RECORDS. THESE FIGURES DO NOT INCLUDE THE USE OF OTHER EMPLOYEES IN OTHER FARMING OPERATIONS, SUCH AS TRACTOR OPERATORS, IRRIGATORS, HOVEL CREWS AND ETC:

_____
GARY J. PASQUINELLI:
GENERAL MANAGER:

SUBSCRIBED AND SWORN TO BEFORE ME, THIS 13th DAY OF JANUARY, 1977:

_____
C. O. STAFFORD:
NOTARY PUBLIC:

My Commission Expires Feb. 27, 1978

PETE PASQUINELLI

Year 1974 Dates of Year:	Lettuce:		Lettuce & Cantaloupes Cantaloupes:	
	Pre-Harvest:	Harvest:	Pre-Harvest:	Harvest:
1/1 TO 1/8:	67	190	0	0
1/9 TO 1/15:	64	192	0	0
1/16 TO 1/22:	64	182	0	0
1/23 TO 1/29:	61	186	0	0
1/30 TO 2/5:	25	170	0	0
2/6 TO 2/12:	25	165	0	0
2/13 TO 2/19:	25	163	0	0
2/20 TO 2/26:	25	163	17	0
2/27 TO 3/5:	23	125	30	0
3/6 TO 3/12:	0	130	39	0
3/13 TO 3/19:	0	140	40	0
3/20 TO 3/26:	0	145	39	0
3/27 TO 4/2:	0	140	44	0
4/3 TO 4/9:	0	90	45	0
4/10 TO 4/16:	0	51	46	0
4/17 TO 4/23:	0	50	46	0
4/24 TO 4/30:	0	0	46	0
5/1 TO 5/7:	0	0	100	0
5/8 TO 5/14:	0	0	120	0
5/15 TO 5/21:	0	0	154	0
5/22 TO 5/28:	0	0	163	30
5/29 TO 6/4:	0	0	80	31
6/5 To 6/11:	0	0	40	150
6/12 TO 6/18:	0	0	30	300
6/19 TO 6/25:	0	0	15	340
6/26 TO 7/2:	0	0	0	316
7/3 TO 7/9:	0	0	0	190
7/10 TO 7/16:	0	0	0	53

Year 1974 Dates Of Year:	Lettuce:		Lettuce & Cantaloupes Cantaloupes:	
	Pre-Harvest:	Harvest:	Pre-Harvest:	Harvest:
7/17 TO 7/23:	0	0	0	0
7/24 TO 7/30:	0	0	0	0
7/31 TO 8/6:	0	0	0	0
8/7 TO 8/13:	0	0	0	0
8/14 TO 8/20:	0	0	0	0
8/21 TO 8/27:	0	0	0	0
8/28 TO 9/3:	0	0	0	0
9/4 TO 9/10:	0	0	0	0
9/11 TO 9/17:	30	0	0	0
9/18 TO 9/24:	48	0	0	0
9/25 TO 10/1:	100	0	0	0
10/2 TO 10/8:	60	0	0	0
10/9 TO 10/15:	200	0	0	0
10/16 TO 10/22:	284	0	0	0
10/23 TO 10/29:	279	0	0	0
10/30 TO 11/5:	160	0	0	0
11/6 TO 11/12:	160	0	0	0
11/13 TO 11/19:	110	37	0	0
11/20 TO 11/26:	99	92	0	0
11/27 TO 12/3:	60	125	0	0
12/4 TO 12/10:	35	263	0	0
12/11 TO 12/17:	24	265	0	0
12/18 TO 12/24:	20	280	0	0
12/25 TO 12/31:	20	246	0	0

[Letterhead of Pete Pasquinelli]

JANUARY 13, 1977:

GENTLEMEN:

I HEREBY CERTIFY THAT TO THE BEST OF MY KNOWLEDGE, THE FIGURES FOR EMPLOYEES USED IN THE PRE-HARVEST AND HARVEST OF LETTUCE AND PRE-HARVEST AND HARVEST OF CANTALOUPES IN MY ORGANIZATION FOR THE YEAR 1975, ARE TRUE AND CORRECT FROM MY AVAILABLE PAYROLL RECORDS. THESE FIGURES DO NOT INCLUDE THE USE OF OTHER EMPLOYEES IN OTHER FARMING OPERATIONS, SUCH AS TRACTOR OPERATORS, IRRIGATORS, SHOVEL CREWS AND ETC:

GARY J. PASQUINELLI:
GENERAL MANAGER:

SUBSCRIBED AND SWORN TO BEFORE ME, THIS 13th DAY OF JANUARY, 1977:

C. O. STAFFORD:
NOTARY PUBLIC:

My Commission Expires Feb. 27, 1978

PETE PASQUINELLI

Year 1975: Dates of Year:	Lettuce:		Lettuce & Cantaloupes: Cantaloupes:	
	Pre-Harvest:	Harvest:	Pre-Harvest:	Harvest:
1/1 TO 1/7:	63	253	0	0
1/8 TO 1/14:	64	255	0	0
1/15 TO 1/21:	65	255	0	0
1/22 TO 1/28:	65	258	0	0
1/29 TO 2/4:	26	248	0	0
2/5 TO 2/11:	24	242	0	0
2/12 TO 2/18:	23	246	0	0
2/19 TO 2/25:	22	242	0	0
2/26 TO 3/4:	18	233	27	0
3/5 TO 3/11:	0	233	43	0
3/12 TO 3/18:	0	220	45	0
3/19 TO 3/25:	0	227	47	0
3/26 TO 4/1:	0	225	49	0
4/2 TO 4/8:	0	290	90	0
4/9 TO 4/15:	0	278	110	0
4/16 TO 4/22:	0	266	120	0
4/23 TO 4/29:	0	0	117	0
4/30 TO 5/6:	0	0	140	0
5/7 TO 5/13:	0	0	160	0

Year 1975 Dates of Year:	Lettuce:		Lettuce & Cantaloupes: Cantaloupes:	
	Pre-Harvest:	Harvest:	Pre-Harvest:	Harvest:
5/14 TO 5/20:	0	0	175	0
5/21 TO 5/27:	0	0	173	0
5/28 TO 6/3:	0	0	173	0
6/4 TO 6/10:	0	0	140	169
6/11 TO 6/17:	0	0	142	163
6/18 TO 6/24:	0	0	138	163
6/25 TO 7/1:	0	0	122	166
7/2 TO 7/8:	0	0	0	357
7/9 TO 7/15:	0	0	0	355
7/16 TO 7/22:	0	0	0	355
7/23 TO 7/29:	0	0	0	0
7/30 TO 8/5:	0	0	0	0
8/6 TO 8/12:	0	0	0	0
8/13 TO 8/19:	0	0	0	0
8/20 TO 8/26:	0	0	0	0
8/27 TO 9/2:	0	0	0	0
9/3 TO 9/9:	0	0	0	0
9/10 TO 9/16:	26	0	0	0
9/17 TO 9/23:	26	0	0	0
9/24 TO 9/30:	27	0	0	0
10/1 TO 10/7:	80	0	0	0
10/8 TO 10/14:	118	0	0	0
10/15 TO 10/21:	134	0	0	0
10/22 TO 10/28:	134	0	0	0
10/29 TO 11/4:	90	0	0	0
11/5 TO 11/11:	82	57	0	0
11/12 TO 11/18:	82	66	0	0
11/19 TO 11/25:	79	66	0	0
11/26 TO 12/2:	79	75	0	0

Year 1975 Dates of Year:	Lettuce:		Lettuce & Cantaloupes: Cantaloupes:	
	Pre-Harvest:	Harvest:	Pre-Harvest:	Harvest:
12/3 TO 12/9:	70	290	0	0
12/10 TO 12/16:	66	290	0	0
12/17 TO 12/23:	66	280	0	0
12/24 TO 12/30:	64	280	0	0

[Letterhead of Pete Pasquinelli]

JANUARY 13, 1977:

GENTLEMEN:

I HEREBY CERTIFY THAT TO THE BEST OF MY KNOWLEDGE, THE FIGURES FOR EMPLOYEES USED IN THE PRE-HARVEST AND HARVEST OF LETTUCE AND PRE-HARVEST AND HARVEST OF CANTALOUPES IN MY ORGANIZATION FOR THE YEAR 1976, ARE TRUE AND CORRECT FROM MY AVAILABLE PAYROLL RECORDS. THESE FIGURES DO NOT INCLUDE THE USE OF OTHER EMPLOYEES IN OTHER FARMING OPERATIONS, SUCH AS TRACTOR OPERATORS, IRRIGATORS, SHOVEL CREWS AND ETC:

GARY J. PASQUINELLI:
GENERAL MANAGER:

SUBSCRIBED AND SWORN TO BEFORE ME, THIS 13th DAY OF JANUARY, 1977:

C. O. STAFFORD:
NOTARY PUBLIC:

My Commission Expires Feb. 27, 1978

PETE PASQUINELLI

Year 1976 Dates of Year:	Lettuce:		Lettuce & Cantaloupes Cantaloupes:	
	Pre-Harvest:	Harvest:	Pre-Harvest:	Harvest:
1/1 TO 1/6:	66	234	-0-	-0-
1/7 TO 1/13:	67	246	-0-	-0-
1/14 TO 1/20:	68	241	-0-	-0-
1/21 TO 1/27:	67	240	-0-	-0-
1/28 TO 2/3:	25	189	-0-	-0-
2/4 TO 2/10:	33	177	-0-	-0-
2/11 TO 2/17:	28	185	-0-	-0-
2/18 TO 2/24:	28	181	-0-	-0-
2/25 TO 3/2:	40	166	-0-	-0-
3/3 TO 3/9:	38	173	-0-	-0-
3/10 TO 3/16:	0	159	36	-0-
3/17 TO 3/23:	0	168	40	-0-
3/24 TO 3/30:	0	164	38	-0-
3/31 TO 4/6:	0	203	87	-0-
4/7 TO 4/13:	0	200	80	-0-
4/14 TO 4/20:	0	206	90	-0-
4/21 TO 4/27:	0	0	85	-0-
4/28 TO 5/4:	0	0	130	-0-
5/5 TO 5/11:	0	0	128	-0-
5/12 TO 5/18:	0	0	126	-0-
5/19 TO 5/25:	0	0	132	-0-
5/26 TO 6/1:	0	0	128	-0-
6/2 TO 6/8:	0	0	94	200
6/9 TO 6/15:	0	0	88	200
6/16 TO 6/22:	0	0	94	250
6/23 TO 6/29:	0	0	86	256
6/30 TO 7/6:	0	0	0	240
7/6 TO 7/13:	0	0	0	230

Year 1976 Dates Of Year:	Lettuce:		Lettuce & Cantaloupes Cantaloupes:	
	Pre-Harvest:	Harvest:	Pre-Harvest:	Harvest:
7/14 TO 7/20:	0	0	0	190
7/21 TO 7/27:	0	0	0	0
7/28 TO 8/3:	0	0	0	0
8/4 TO 8/10:	0	0	0	0
8/11 TO 8/17:	0	0	0	0
8/18 TO 8/24:	0	0	0	0
8/25 TO 8/31:	0	0	0	0
9/1 TO 9/7:	26	0	0	0
9/8 TO 9/14:	27	0	0	0
9/15 TO 9/21:	31	0	0	0
9/22 TO 9/28:	32	0	0	0
9/29 TO 10/5:	90	0	0	0
10/6 TO 10/12:	130	0	0	0
10/13 TO 10/19:	154	0	0	0
10/20 TO 10/26:	160	0	0	0
10/27 TO 11/2:	136	0	0	0
11/3 TO 11/9:	120	0	0	0
11/10 TO 11/16:	117	90	0	0
11/17 TO 11/23:	115	106	0	0
11/24 TO 11/30:	110	118	0	0
12/1 TO 12/7:	45	280	0	0
12/8 TO 12/14:	47	282	0	0
12/15 TO 12/21:	47	285	0	0
12/22 TO 12/28:	46	287	0	0

[Letterhead of INTER HARVEST INC.]

January 13, 1977

To Whom it May Concern:

The enclosed sheets are an accurate presentation of the number of field workers employed by Inter Harvest, Inc. in the state of Arizona for the years 1974, 1975, and 1976.

These figures were taken from the Company's official payroll records.

Sincerely,

_____
Shirley Taylor
Payroll Accountant

SUBSCRIBED AND SWORD BEFORE ME this 13th day of January 1977

_____
James H. Anderson
Notary Public-California

NUMBER OF EMPLOYEES - ARIZONA
1974

Week Ending	Production	Harvesting
12-29-73	248	—
01-05-74	207	—
01-12-74	189	—
01-19-74	234	—

Week Ending	Production	Harvesting
01-26-74	199	—
02-02-74	206	—
02-09-74	203	—
02-16-74	167	—
02-23-74	157	—
03-02-74	157	122
03-09-74	143	159
03-16-74	136	431 (Yuma)
03-23-74	126	606
03-30-74	112	759
04-06-74	63	776 (Centra')
04-13-74	72	576
04-20-74	65	551
04-27-74	34	192
05-04-74	33	134
05-11-74	35	—
05-18-74	33	—
05-25-74	20	—
06-01-74	21	—
06-08-74	19	—
06-15-74	19	—
06-22-74	21	—
06-29-74	20	—
07-06-74	24	—
07-13-74	37	—
07-20-74	41	—
07-27-74	41	—
08-03-74	40	—
08-10-74	49	—
08-17-74	53	—
08-24-74	59	—

Week Ending	Production	Harvesting
08-31-74	59	—
09-07-74	153	—
09-14-74	188	—
09-21-74	177	—
09-28-74	261	—
10-05-74	375	—
10-12-74	299	—
10-19-74	215	—
10-26-74	198	—
11-02-74	197	—
11-09-74	240	89
11-16-74	94	488 (Yuma)
11-23-74	92	800
11-30-74	84	796
12-07-74	49	557 (Central)
12-14-74	122	447
12-21-74	125	217

NUMBER OF EMPLOYEES - ARIZONA
1975

Week Ending	Production	Harvesting
12-28-74	230	140 Central
01-04-75	313	—
01-11-75	304	—
01-18-75	230	—
01-25-75	213	—
02-01-75	212	—
02-08-75	200	—
02-15-75	200	—
02-22-75	203	—
03-01-75	139	—

Week Ending	Production	Harvesting
03-08-75	160	111
03-15-75	118	108
03-22-75	111	281 (Yuma)
03-29-75	80	665 (Yuma)
04-05-75	40	789
04-12-75	37	820 (Central)
04-19-75	35	747
04-26-75	34	467
05-03-75	34	503
05-10-75	32	93
05-17-75	28	—
05-24-75	25	—
05-31-75	17	—
06-07-75	17	—
06-14-75	18	—
06-21-75	19	—
06-28-75	17	—
07-05-75	20	—
07-12-75	24	—
07-19-75	23	—
07-26-75	25	—
08-02-75	25	—
08-09-75	28	—
08-06-75	29	—
08-23-75	33	—
08-30-75	39	—
09-06-75	53	—
08-13-75	138	—
09-20-75	203	—
09-27-75	349	—
10-04-75	368	—

Week Ending	Production	Harvesting
10-11-75	317	—
10-18-75	159	—
10-25-75	113	—
11-01-75	119	—
11-08-75	116	—
11-15-75	60	325
11-22-75	55	579 (Central)
11-29-75	45	771 (Central)
12-06-75	42	665 (Yuma)
12-13-75	125	593
12-20-75	120	391

NUMBER OF EMPLOYEES - ARIZONA
1976

Week Ending	Production	Harvesting
12-27-75	120	138 (Yuma)
01-03-76	218	117 (Yuma)
01-10-76	265	—
01-17-76	225	—
01-24-76	217	—
01-31-76	212	—
02-07-76	214	—
02-14-76	210	—
02-21-76	162	—
02-28-76	158	285
03-06-76	149	31
03-13-76	144	368
03-20-76	74	737 (Yuma)
03-27-76	34	733 (Central)
04-03-76	33	795 (Central)
04-10-76	36	498 (Central)

Week Ending	Production	Harvesting
04-17-76	34	Yuma 411
04-24-76	31	489 Central
05-01-76	29	131
05-08-76	28	32
05-15-76	29	—
05-22-76	30	—
05-29-76	25	—
06-05-76	38	—
06-12-76	44	—
06-19-76	45	—
06-26-76	46	—
07-03-76	33	—
07-10-76	31	—
07-17-76	34	—
07-24-76	38	—
07-31-76	40	—
08-07-76	37	—
08-14-76	36	—
08-21-76	33	—
08-28-76	40	—
09-04-76	62	—
09-11-76	87	—
09-18-76	189	—
09-25-76	299	—
10-02-76	428	—
10-09-76	411	—
10-16-76	286	—
10-23-76	212	—
10-30-76	198	—
11-06-76	131	—
11-13-76	71	Yuma 190 Central

Week Ending	Production	Harvesting
11-20-76	64	820
11-27-76	50	Yuma 770 Central
12-04-76	43	843
12-11-76	141	772
12-18-76	142	479
12-25-76	136	1

[Letterhead of J. R. Norton Company]

NUMBER OF EMPLOYEES IN THE MARANA AREA DURING 1974

WEEK ENDING	PRE HARVEST EMPLOYEES	HARVEST EMPLOYEES
1-7-74	11	
1-12	9	
1-19	11	
1-26	7	
2-2	9	
2-9	11	
2-16	10	
2-23	10	
3-2	7	
3-9	11	
3-16	13	
3-23	15	
3-30	12	
4-6 & 4-8	13	187
4-13 & 4-15	15	343
4-20 & 4-22	12	375
4-29	14	331
5-4 & 5-6	9	290
5-11	5	

WEEK ENDING	PRE HARVEST EMPLOYEES	HARVEST EMPLOYEES
5-25	2	
6-29	5	
7-6	4	
8-3	4	
8-10	10	
8-17	14	
8-24	12	
8-31	14	
9-7	12	
9-14	14	
9-21	9	
9-28	9	
10-5	11	
10-12	9	
10-19	8	
10-26	9	
11-2 & 11-4	9	131
11-9 & 11-11	12	190
11-16 & 11-18	12	106
11-23 & 11-25	15	95
11-30	14	
12-7	16	
12-14	16	
12-21	15	
12-28	8	

J. R. Norton Company certifies
that the above figures are correct

January 14, 1977

My Commission Expires
June 24, 1978

[Letterhead of J. R. Norton Company]

NUMBER OF EMPLOYEES IN THE MARANA AREA DURING 1975

WEEK ENDING	PRE HARVEST EMPLOYEES	HARVEST EMPLOYEES
1-14-75	12	
1-11	14	
1-18	16	
1-25	13	
2-1	13	
2-8	11	
2-15	12	
2-22	9	
3-1	10	
3-8	10	
3-15	7	
3-22	7	
3-29	11	
4-5	11	
4-12 & 4-14	11	118
4-19 & 4-21	13	215
4-26 & 4-28	14	394
5-3 & 5-5	11	466
5-10 & 5-12	12	206
5-17	7	

WEEK ENDING	PRE HARVEST EMPLOYEES	HARVEST EMPLOYEES
5-24	2	
6-75	None	
7-26	6	
8-2	10	
8-9	19	
8-16	17	
8-23	18	
8-30	17	
9-6	15	
9-13	12	
9-20	16	
9-27	18	
10-4	17	
10-11	17	
10-18	16	
10-25	18	
11-1	16	
11-8 & 11-10	17	229
11-15 & 11-17	17	281
11-22 & 11-24	18	237
11-29	23	
12-6-75	20	
12-13	21	
12-20	17	

J. R. Norton Company hereby
certifies that the above figures are correct

January 14, 1977

My Commission Expires
June 24, 1978

[Letterhead of J. R. Norton Company]

NUMBER OF EMPLOYEES IN THE MARANA AREA DURING 1976

WEEK ENDING	PRE HARVEST EMPLOYEES	HARVEST EMPLOYEES
1-3-76	8	
1-10	17	
1-17	14	
1-24	15	
1-31	15	
2-7	13	
2-14	13	
2-21	16	
2-28	15	
3-6	14	
3-13	18	
3-20	15	
3-27 & 3-29	16	37
4-3 & 4-5	14	199
4-10 & 4-12	12	379
4-17 & 4-19	14	397
4-24 & 4-26	16	391
5-1	12	
5-5 & 5-8	6	231
5-29	5	
8-7	11	
8-14	15	
8-21	21	
8-28	20	
9-4	19	
9-11	13	

WEEK ENDING	PRE HARVEST EMPLOYEES	HARVEST EMPLOYEES
9-18	13	
9-25	13	
10-2	12	
10-9	14	
10-16	14	
10-23	15	
10-30	14	
11-1	43	
11-6 & 11-8	15	235
11-13 & 11-15	12	281
11-20 & 11-22	13	270
11-27	21	
12-4-76	21	
12-11	17	
12-18	21	
12-25	10	

J. R. Norton Company hereby
certifies that the above figures are correct.

January 14, 1977

My Commission Expires
June 24, 1978

[Letterhead of J.A. WOOD COMPANY]

TO WHOM IT MAY CONCERN:

I, KERMIT HEINRICH, do solemnly swear the attached compilation of facts and figures is correct to the best of my knowledge; and that said facts and figures were taken from the permanent official payroll records of J A Wood Company; and that said facts and figures represent the total number of persons employed in the State of Arizona by J A Wood Company during the years 1974-1975-1976 at least one to six days during each pay period ending date who were either engaged in lettuce pre-harvest occupations (thinning, weeding and/or doubling) and/or lettuce harvest (cutting, trimming, packing, wrapping, closing, windrowing, loading).

Kermit Heinrich

In witness whereof I hereunto
set my hand and official seal.

1/14/77

Frank J Dugal
Notary Public
My Commission Expires Aug. 31, 1979

J. A. WOOD CO.
P. O. BOX 1696
GLENDALE, ARIZONA 85311
1974

	Pre-Harvest			Harvest		
	Yuma	Phoenix	Marana	Yuma	Phoenix	Marana
1-5-74						
1-12	63	34				
1-19	24	39				
1-26	91	46				
2-2		59				
2-9		47				
2-16		52				
2-23		65		62		
3-2	17	53		148		
3-9		85		182	144	
3-16				163	229	
3-23				49	267	
3-30					333	
4-6					313	
4-13					313	
4-20					255	
4-27					207	
5-4						
5-11						
5-18						
5-25						
6-1						
6-8						
6-15						
6-22						
6-29						
7-6						
7-13						

	Pre-Harvest			Harvest		
	Yuma	Phoenix	Marana	Yuma	Phoenix	Marana
7-20						
7-27						
8-3						
8-10						
8-17						
8-24						
8-31						
9-7						
9-14						
9-21		57				
9-28		102				
10-5	55	79				
10-12	62	63				
10-19						
10-26	75	52				
11-2	81	59				
11-9	64					
11-16		43				
11-23	40			58	191	
11-30	37			51	198	
12-7	31			48	196	
12-14				191	132	
12-21				263	46	
12-28				80		

J. A. WOOD CO.
P. O. BOX 1696
GLENDALE, ARIZONA 85311
1975

	Pre-Harvest			Harvest		
	Yuma	Phoenix	Marana	Yuma	Phoenix	Marana
1-4-75	23	54		127		
1-11		59		50		
1-18		55		92		
1-25				103		
2-1		71		29		
2-8		45				
2-15		55				
2-22		64				
3-1		54		60		
3-8		34				
3-15						
3-22		61				
3-29					97	
4-5					310	
4-12					323	
4-19					364	
4-26					325	84
5-3					119	225
5-10						160
5-17						56
5-24						
5-31						
6-7						
6-15						
6-22						
6-29						
7-5						

	Pre-Harvest			Harvest		
	Yuma	Phoenix	Marana	Yuma	Phoenix	Marana
7-12						
7-19						
7-26						
8-3						
8-10						
8-17						
8-24						
8-31						
9-6						
9-13			86			
9-20 includes 83 men of this count who travelled 1 or 2 days to Marana		184	49			
9-27 includes 44 men of this count who travelled 1 day to Marana		260				
10-4 includes 27 men of this count who travelled 2 days to Marana		115	47			
10-11 includes 17 men 1 day to Marana		116				
10-18		98				
10-25		11				
11-1						
11-8					233	41
11-15		14			304	70
11-22		15			240	87
11-29		11			263	91

	Pre-Harvest			Harvest		
	Yuma	Phoenix	Marana	Yuma	Phoenix	Marana
12-6	includes 24 men of this count who travelled to Marana 1 day harvest	11			164	75
12-13					111	
12-20					118	
12-27					91	

J. A. WOOD CO.
P. O. BOX 1696
GLENDALE, ARIZONA 85311

1976

	Pre-Harvest			Harvest		
	Yuma	Phoenix	Marana	Yuma	Phoenix	Marana
1-3-76		4			66	
1-10					34	
1-17		32				
1-24					28	
1-31		46				
2-7		82				
2-14		201			21	
2-21		101			29	
2-28		56			21	
3-6						
3-13					119	
3-20					124	
3-27		9			131	
4-3					128	
4-10					329	156
4-17					306	170
4-24					126	156
5-1						42

	Pre-Harvest			Harvest		
	Yuma	Phoenix	Marana	Yuma	Phoenix	Marana
5-8						32
5-15					59	41
5-22					177	44
5-29					270	53
6-5					325	64
6-12						
6-19						
6-26						
7-3						
7-10						
7-17						
7-24						
7-31						
8-7						
8-14						
8-21						
8-28						
9-4						
9-11						
9-18	includes 25 men of this count who travelled to Marana	97				
9-25		179				
10-2		175				
10-9		134				
10-16		80				
10-23		32				
10-30						
11-6						
11-13						
11-20						

	Pre-Harvest			Harvest	
	Yuma	Phoenix	Marana	Yuma	Phoenix	Marana
11-27					329	72
12-4					333	31
12-11					103	
12-18						
12-25					108	

[Letterhead of Cactus Kid]

The attached exhibit showing the number of employees in lettuce excludes truck drivers, equipment operators, and supervisors. It also refers to only lettuce in Arizona and no other.

Prepared by

Cactus Distributors, Inc.

_____

James J. Dorsey
Vice President

Subscribed and sworn to before me, this 13th day of January 1977.

_____

Notary Public
My Commission Expires
June 27, 1980

[Letterhead of Cactus Kid]

1974
CACTUS DISTRIBUTORS, INC.
Number of Employees
In Lettuce

Period Ending	Pre-Harvest	Harvest
1- 9	45	
1-16	25	
1-23	60	
1-30	44	
2- 6 to 2-20	none	none
2-27	14	
3- 6	none	none
3-13		71
3-20		24
3-27		82
4- 3		79
4-10		70
4-18		58
4-20 to 9-20	none	none
9-25	37	
10- 2	92	
10- 9	49	
10-16	33	
10-23	28	
10-30		78
11- 6		109
11-13		94
11-20		83
11-27		72
12- 4		63

1974
CACTUS DISTRIBUTORS, INC.

Number of Employees
In Lettuce

Period Ending	Pre-Harvest	Harvest
12-11	49	61
12-18	47	
12-25	26	

[Letterhead of Cactus Kid]

1975
CACTUS DISTRIBUTORS, INC.
Number of Employees
In Lettuce

Period Ending	Pre-Harvest	Harvest
1-15	25	
1-22	36	
1-29	29	
2- 5	39	
2-12	24	
2-19	30	
2-26	32	
3- 5	none	none
3-12	none	none
3-19		62
3-26	32	90
4- 2		96
4- 9		88
4-16		94
4-23		96
4-30	none	none
5- 7		87

1975
CACTUS DISTRIBUTORS, INC.
Number of Employees
In Lettuce

Period Ending	Pre-Harvest	Harvest
5-14		77
5-15 to 9- 1	none	none
9-10	40	
9-17	51	
9-24	63	
10- 1	30	
10- 8	27	
10-15	15	
10-22	17	
10-29		63
11- 5		88
11-12		93
11-19		101
11-26		82
12- 3		76
12-10		37
12-17	56	35
12-24	69	
12-31	69	

[Letterhead of Cactus Kid]

1976
CACTUS DISTRIBUTORS, INC.
Number of Employees
In Lettuce

Period Ending	Pre-Harvest	Harvest
1-1 to 2-15	none	none

1976
CACTUS DISTRIBUTORS, INC.
Number of Employees
In Lettuce

Period Ending	Pre-Harvest	Harvest
2-18	23	
2-25	27	
3- 3	25	
3-10	28	
3-17		59
3-24		72
3-31		67
4- 7		69
4-14		72
4-21		69
4-28		75
5-1 to 9-1	none	none
9- 8	40	
9-15	57	
9-22	52	
9-29	46	
10- 6	none	
10-13	77	
10-18	58	
10-25	none	none
11- 3		70
11-10		73
11-17		64
11-24		70
12- 1		60
12- 8		63
12-15	none	none

1976
CACTUS DISTRIBUTORS, INC.
Number of Employees
In Lettuce

Period Ending	Pre-Harvest	Harvest
12-22	22	
12-29	32	

[Letterhead of ACTION PRODUCE]

W/E		Harvest		Thinning
10-10-75	Willcox	38		-0-
10-17-75		70		-0-
10-24-75		59		-0-
10-31-75		26		-0-
11-7-75		60	Central	-0-
11-14-75		55		-0-
11-21-75		111		-0-
11-28-75		90		-0-
12-5-75		87		-0-
12-12-75		88		-0-
12-19-75		97		-0-
12-26-75		-0-		-0-
1-2-76		-0-		-0-
1-9-76		-0-		-0-
1-16-76		-0-		25
1-23-76		-0-		35
1-30-76		-0-		24
2-6-76		-0-		23
2-13-76		-0-		29
2-20-76		-0-		28
2-27-76		-0-		27
3-5-76		-0-		30

W/E		Harvest		Thinning
3-12-76		-0-		41
3-19-76		-0-		56
3-26-76		-0-		61
4-2-76		25		24
2-9-76		77		21
4-16-76		66		37
4-23-76		79	Central	38
4-30-76		49		-0-
5-7-76		54		18
5-14-76		56		36
5-21-76		55		-0-
5-28-76		45		-0-
6-4-76	Willcox	86		-0-
6-11-76		121		-0-
6-18-76		110		-0-
6-25-76		-0-		-0-
7-2-76		-0-		-0-
7-9-76		-0-		-0-
7-16-76		-0-		-0-
7-23-76		-0-		-0-
7-30-76		-0-		-0-
8-6-76		-0-		-0-
8-13-76		-0-		-0-
8-20-76		-0-		30
8-27-76		-0-		44
9-3-76		-0-		28
9-10-76		-0-		31
9-17-76		-0-		42
9-24-76		-0-		38
10-1-76		-0-		31

W/E		Harvest		Thinning
10-8-76	Willcox	49		41
10-15-76		52		-0-
10-22-76		59		-0-
10-29-76	Willcox	58		-0-
11-5-76		123		-0-
11-12-76		107	Central	-0-
11-19-76		89		-0-
11-26-76		107		-0-
12-3-76		103		-0-
12-10-76		71		-0-
12-17-76		31		-0-
12-24-76		-0-		-0-
12-31-76		-0-		22

I, Shirley McDaniel, sware the above figures were taken from Action Produce payroll records from the period October 10, 1975 thru December 31, 1976. These figures represent the number of people employed by us in our harvest operation and the thinning represents the number of people employed in thinning, hoeing and doubling. These figures do not include any other employees such as truck drivers, foremen or supervisors.

1-13-77

Shirley McDaniel, Bookkeeper

STATE OF ARIZONA }
County of Maricopa } ss

This instrument was acknowledged before me this 13th day of January, 1977, by Shirley McDaniel in witness whereof I herewith set my hand and official seal.

_____, NOTARY PUBLIC

My Commission Expires Aug. 17, 1978

CITRUS

[Letterhead of ARIZONA CITRUS GROWERS]

TO WHOM IT MAY CONCERN:

I, Otis Ralph, do solemnly swear the following compilation of facts and figures were taken from the permanent official payroll records of ARIZONA CITRUS GROWERS COOPERATIVE, and that said facts and figures represent the total number of persons employed in the State of Arizona by ARIZONA CITRUS GROWERS COOPERATIVE during the seasons, 1973-74, 1974-75, 1975-76, at least one to seven days during each pay period ending date who were engaged in the harvest activity involving citrus fruit owned by member growers of ARIZONA CITRUS GROWERS COOPERATIVE.

_____
OTIS RALPH
General Manager

In witness whereof I hereunto set my hand and official seal.

_____
Notary Public
My Commission Expires
Mar. 22, 1980

1973-74 SEASON

PAY PERIOD WEEK ENDING	HARVEST EMPLOYEES
9-04-73	30
9-11-73	39
9-18-73	99
9-25-73	130
10-02-73	161
10-09-73	191
10-16-73	200
10-23-73	171
10-30-73	166
11-06-73	152
11-03-73	196
11-20-73	172
11-27-73	171
12-04-73	195
12-11-73	173
12-18-73	161
12-25-73	183
1-01-74	233
1-08-74	225
1-15-74	196
1-22-74	160

1973-74 SEASON

PAY PERIOD WEEK ENDING	HARVEST EMPLOYEES
1-29-74	205
2-05-74	186
2-12-74	189
2-19-74	187
2-26-74	181
3-05-74	173
3-12-74	144
3-19-74	132
3-26-74	187
4-02-74	185
4-09-74	165
4-16-74	168
4-23-74	166
4-30-74	152
5-07-74	152
5-14-74	100
5-21-74	107
5-28-74	113
6-04-74	113
6-11-74	133
6-18-74	77
6-25-74	99
7-02-74	89
7-09-74	76
7-16-74	86
8-20-74	38
8-27-74	52

1974-75 SEASON

PAY PERIOD WEEK ENDING	HARVEST EMPLOYEES
9-03-74	66
9-10-74	86
9-17-74	215
9-24-74	215
10-01-74	332
10-08-74	304
10-15-74	358
10-22-74	334
10-29-74	328
11-05-74	362
11-12-74	359
11-19-74	371
11-25-74	350
12-03-74	372
12-10-74	390
12-17-74	360
12-23-74	301
12-30-74	294
1-07-75	293
1-14-75	255
1-21-75	276
1-28-75	248
2-04-75	274
2-11-75	357
2-18-75	328
2-25-75	397
3-04-75	398
3-11-75	324
3-18-75	336

1974-75 SEASON

PAY PERIOD WEEK ENDING	HARVEST EMPLOYEES
3-25-75	335
4-01-75	300
4-08-75	229
4-15-75	239
4-22-75	216
4-29-75	208
5-06-75	229
5-13-75	206
5-20-75	179
5-27-75	176
6-03-75	166
6-10-75	157
6-17-75	152
6-24-75	129
7-01-75	49
7-08-75	133
7-15-75	143
7-22-75	118
9-16-75	25
9-23-75	47
9-30-75	115

1975-76 SEASON

PAY PERIOD WEEK ENDING	HARVEST EMPLOYEES
10-07-75	146
10-14-75	147
10-21-75	171
10-28-75	152
11-04-75	153

1976-76 SEASON

PAY PERIOD WEEK ENDING	HARVEST EMPLOYEES
11-11-75	197
11-18-75	267
11-25-75	245
12-02-75	256
12-09-75	279
12-16-75	252
12-23-75	245
12-30-75	288
1-06-76	292
1-13-76	215
1-20-76	237
1-27-76	235
2-03-76	155
2-10-76	150
2-17-76	150
2-24-76	156
3-02-76	153
3-09-76	155
3-16-76	157
3-23-76	146
3-30-76	133
4-06-76	110
4-13-76	87
4-20-76	83
4-27-76	128
5-04-76	109
5-11-76	106
5-18-76	119
5-25-76	126

1976-76 SEASON

PAY PERIOD WEEK ENDING	HARVEST EMPLOYEES
6-01-76	105
6-08-76	89
6-15-76	87
6-22-76	76
6-29-76	75
7-06-76	77
7-13-76	77
7-20-76	67
7-27-76	32
8-03-76	45
8-10-76	40
8-31-76	15
9-07-76	33
9-14-76	110
9-21-76	133
9-28-76	163

GRAPES

[Letterhead of Bodine Produce Company]

TO WHOM IT MAY CONCERN:

I, Ralph Bodine, do solemnly swear the following compilation of facts and figures were taken from the permanent official payroll records of BODINE PRODUCE Company, and that said facts and figures represent the total number of persons employed in the State of Arizona by BODINE PRODUCE Company during the years, 1974, 1975, and 1976 at least one to seven days during each pay period ending date who were either engaged in a pre-harvest or harvest activity involving table grapes owned by BODINE PRODUCE Company.

_____

Ralph E. Bodine

In witness whereof I hereunto set my hand and official seal.

_____

Subscribed and sworn to me this 13th day of January 1977

My Commission Expires March 29, 1978

1974

PAY PERIOD WEEK ENDING	PRE-HARVEST EMPLOYEES	HARVEST EMPLOYEES
1-3-74	95	0
1-10-74	88	0
1-17-74	101	0

1974

PAY PERIOD WEEK ENDING	PRE-HARVEST EMPLOYEES	HARVEST EMPLOYEES
1-24-74	83	0
1-31-74	90	0
2-7-74	52	0
2-14-74	76	0
2-21-74	39	0
2-28-74	44	0
3-7-74	54	0
3-14-74	58	0
3-21-74	61	0
3-28-74	52	0
4-4-74	88	0
4-11-74	88	0
4-18-74	108	0
4-25-74	92	0
5-2-74	100	0
5-9-74	10	0
5-16-74	114	0
5-23-74	83	0
5-30-74	87	0
6-6-74	44	0
6-13-74	0	247
6-20-74	0	225
6-27-74	0	349
7-4-74	0	364
7-11-74	0	403
7-18-74	0	10
7-25-74	6	0
8-1-74	7	0
8-8-74	6	0

1974

PAY PERIOD WEEK ENDING	PRE-HARVEST EMPLOYEES	HARVEST EMPLOYEES
8-15-74	0	0
8-22-74	14	0
8-29-74	4	0
9-5-74	8	0
9-12-74	10	0
9-19-74	12	0
9-26-74	16	0
10-3-74	14	0
10-13-74	13	0
1-17-74	15	0
10-24-74	11	0
10-31-74	9	0
11-7-74	1	0
11-14-74	2	0
11-21-74	1	0
11-28-74	1	0
12-5-74	2	0
12-12-74	3	0
12-19-74	56	0
12-26-74	59	0

1975

PAY PERIOD WEEK ENDING	PRE-HARVEST EMPLOYEES	HARVEST EMPLOYEES
1-2-75	53	0
1-19-75	53	0
1-16-75	55	0
1-23-75	54	0
1-30-75	13	0
2-6-75	12	0

1975

PAY PERIOD WEEK ENDING	PRE-HARVEST EMPLOYEES	HARVEST EMPLOYEES
2-13-75	8	0
2-20-75	21	0
2-27-75	5	0
3-6-75	6	0
3-13-75	4	0
3-20-75	6	0
3-27-75	6	0
4-4-75	56	0
4-10-75	6	0
4-17-75	8	0
4-24-75	86	0
5-1-75	56	0
5-8-75	59	0
5-15-75	63	0
5-22-75	64	0
5-29-75	71	0
6-5-75	100	0
6-12-75	7	0
6-19-75	75	0
6-26-75	23	0
6-30-75	68	0
7-3-75	0	176
7-10-75	0	170
7-17-75	0	336
7-24-75	0	365
7-31-75	0	319
8-7-75	10	0
8-14-75	8	0
8-21-75	6	0

1975

PAY PERIOD WEEK ENDING	PRE-HARVEST EMPLOYEES	HARVEST EMPLOYEES
8-28-75	7	0
9-4-75	10	0
9-11-75	6	0
9-18-75	5	0
9-25-75	4	0
10-2-75	3	0
10-9-75	3	0
10-16-75	2	0
10-23-75	2	0
10-30-75	2	0
11-6-75	3	0
11-13-75	3	0
11-20-75	2	0
11-27-75	1	0
12-4-75	1	0
12-11-75	2	0
12-18-75	2	0
12-25-75	2	0

1976

PAY PERIOD WEEK ENDING	PRE-HARVEST EMPLOYEES	HARVEST EMPLOYEES
1-8-76	57	0
1-15-76	60	0
1-22-76	65	0
1-29-76	13	0
2-5-76	10	0
2-12-76	8	0
2-19-76	3	0

1976

PAY PERIOD WEEK ENDING	PRE-HARVEST EMPLOYEES	HARVEST EMPLOYEES
2-26-76	5	0
3-4-76	4	0
3-11-76	4	0
3-18-76	7	0
3-25-76	64	0
4-1-76	61	0
4-8-76	6	0
4-15-76	68	0
4-33-76	66	0
4-29-76	69	0
5-6-76	76	0
5-13-76	80	0
5-20-76	91	0
5-27-76	95	0
6-3-76	33	0
6-10-76	23	0
6-17-76	0	156
6-25-76	0	164
7-1-76	0	323
7-8-76	0	321
7-15-76	0	288
7-22-76	0	7
8-5-76	2	0
8-12-76	2	0
8-19-76	0	0
8-26-76	1	0
9-2-76	2	0
9-3-76	0	0
9-16-76	0	0

1976

PAY PERIOD WEEK ENDING	PRE-HARVEST EMPLOYEES	HARVEST EMPLOYEES
9-23-76	0	0
9-30-76	0	0
10-7-76	0	0
10-14-76	4	0
10-21-76	2	0
10-28-76	1	0
11-4-76	0	0
11-11-76	28	0
11-18-76	2	0
11-25-76	21	0
12-2-76	30	0
12-9-76	29	0
12-16-76	48	0
12-23-76	61	0
12-30-76	56	0

[Letterhead of J. G. BOSWELL COMPANY]

TO WHOM IT MAY CONCERN:

I, H. S. Raymond, do solemnly swear the following facts and figures were taken from the permanent official payroll records of the CACTUS LANE RANCH PAYROLL, and they represent the total number of persons employed in the state of Arizona by the J. G. BOSWELL COMPANY during the years 1974, 1975, and 1976 for at least one to seven days during each pay period who were either engaged in pre-harvest or harvest activity involving table grapes owned by the J. G. BOSWELL COMPANY.

H. S. Raymond

In witness whereof I hereunto set my hand and official seal.

Notary Public
My Commission Expires
Dec. 29, 1979.

J. G. BOSWELL COMPANY
CACTUS LANE RANCH
NUMBER OF EMPLOYEES
1974

P/R date	Preharvest	Harvest
1/6	58	
1/13	59	
1/20	155	
1/27	78	
2/3	75	
2/1	58	
2/17	56	
2/24	44	
3/3	15	
3/10	15	
3/17	15	
3/24	86	
3/31	92	
4/7	98	
4/14	159	
4/21	155	
4/28	41	

P/R date	Preharvest	Harvest
5/5	56	
5/12	49	
5/19	126	
5/26	132	
6/2	55	
6/9	15	
6/16		587
6/23	15	
6/29		205
7/7		607
7/14		567
7/21		50
7/28	15	
8/4	15	
8/11	15	
8/18	15	
8/25	15	
9/1	15	
9/8	15	
9/15	15	
9/22	15	
9/29	15	
10/6	15	
10/13	15	
10/20	15	
10/27	15	
11/3	15	
11/10	15	
11/17	15	
11/24	34	
12/1	52	
12/8	62	

P/R date	Preharvest	Harvest
12/15	55	
12/22	49	
12/29	50	

1975

P/R date	Preharvest	Harvest
1/5	48	
1/12	46	
1/19	48	
1/26	53	
2/2	62	
2/9	53	
2/16	55	
2/23	45	
3/2	28	
3/9	29	
3/16	103	
3/23	15	
3/30	15	
4/6	92	
4/13	41	
4/20	114	
4/27	125	
5/4	127	
5/11	121	
5/18	68	
5/25	131	
6/1	128	
6/8	115	
6/15	68	
6/23	62	
6/29		152

1975

P/R date	Preharvest	Harvest
7/6		603
7/13		672
7/20		550
7/27		632
8/3	15	
8/10	15	
8/17	51	
8/24	15	
8/31	15	
9/7	15	
9/14	15	
9/21	15	
9/28	15	
10/5	15	
10/12	15	
10/19	15	
10/26	15	
11/2	15	
11/9	15	
11/16	15	
11/23	15	
11/30	31	
12/7	55	
12/14	55	
12/21	55	
12/28	58	

1976

P/R date	Preharvest	Harvest
1/4	51	

P/R date	Preharvest	Harvest
1/11	57	
1/18	61	
1/25	57	
2/1	58	
2/8	59	
2/15	58	
2/22	58	
2/29	53	
3/7	15	
3/14	15	
3/21	60	
3/28	61	
4/4	102	
4/11	15	
4/18	131	
4/25	73	
5/2	15	
5/9	15	
5/16	111	
5/23	96	
5/30	77	
6/6	37	
6/13		478
6/20		266
6/27		177
7/4		547
7/11		539
7/18	15	
7/25	17	
8/1	16	
8/8	15	

P/R date	Preharvest	Harvest
8/15	15	
8/22	15	
8/29	15	
9/5	15	
9/12	15	
9/19	15	
9/26	15	
10/3	15	
10/10	15	
10/17	15	
10/24	15	
10/31	15	
11/7	15	
11/14	15	
11/21	15	
11/28	42	
12/5	64	
12/12	64	
12/19	64	
12/26	62	

[Letterhead of RANCHO EL DORADO]

January 12, 1977

TO WHOM IT MAY CONCERN:

I, Edward Surabian, certify under oath that the information attached to this affidavit correctly reflects the number of persons employed in the pre-harvesting and harvesting activities at Rancho El Dorado for the years 1974, 1975 and 1976. The information was taken

directly from records of Rancho El Dorado, for which I have ultimate responsibility and with which I am personally acquainted.

The information generally reflects the number of persons employed in pre-harvest activities in the vinyards and the harvesting of grapes from the vinyards. The pre-harvest activities include: Pruning vines and trees, tying vines, suckering of stumps and crowns, pulling leaves from the vines, counting and dropping bunches from the vines, tipping bunches and girdling vines. The harvest activities include the picking and packing of the grapes. The records also include the employees working in the pre-harvesting and harvesting of a small amount of plums at Rancho El Dorado. The harvest activity generally involved twenty-five employees approximately the first day of harvesting and twenty-five employees for one additional day about four days later. The employees involved in pre-harvesting and harvesting of plums were essentially the same employees involved in the pre-harvesting and harvesting of grapes. Most, but not all, persons working in pre-harvesting activities worked later in the harvesting. In 1974, the last year peaches were harvested at Rancho El Dorado, employees were engaged in that harvest for the weeks ending May 5th and May 12th.

In addition to the numbers indicated, there was a small number of employees, averaging approximately ten, who were full-time permanent employees engaged in general farming activities, such as irrigating the fields, driving tractors, etc.

The numbers reflected in the attached records represent the number of employees who worked from one to six days in the pay period indicated.

_____

Edward Surabian

SUBSCRIBED AND SWORN to before me this 12th day of January, 1977.

_____

Notary Public

My commission expires Sept. 26, 1980

TENNECO WEST, INC.
RANCHO EL DORADO
1974
NUMBER OF EMPLOYEES

Pay Period Week Ending	Pre-Harvest Employees	Harvest Employees
January 6	54	0
January 13	50	0
January 20	67	0
January 27	93	0
February 3	110	0
February 10	102	0
February 17	87	0
February 24	27	0
March 3	3	0
March 10	3	0
March 17	3	0
March 24	3	0
March 31	14	0

Pay Period Week Ending	Pre-Harvest Employees	Harvest Empoyees
April 7	39	0
April 14	112	
April 21	79	0
April 28	121	0
May 5	106	47
May 12	138	52
May 19	174	0
May 26	45	0
June 2	36	0
June 9	92	0
June 16	0	176
June 23	0	191
June 30	0	495
July 7	0	497
July 14	42	0
July 21	2	0
July 28	1	0
August 4	0	0
August 11	0	0
August 18	0	0
August 25	0	0
September 1	0	0
September 8	1	0
September 15	4	0
September 22	3	0
September 29	3	0
October 6	3	0
October 13	6	0

Pay Period Week Ending	Pre-Harvest Employees	Harvest Empoyees
October 20	3	0
October 27	3	0
November 3	2	0
November 10	2	0
November 17	0	0
November 24	0	0
December 1	1	0
December 8	4	0
December 15	49	0
December 22	55	0
December 29	88	0

TENNECO WEST, INC.
RANCHO EL DORADO
1975
NUMBER OF EMPLOYEES

Pay Period Week Ending	Pre-Harvest Employees	Harvest Employees
January 5	84	0
January 12	85	0
January 19	84	0
January 26	119	0
February 2	119	0
February 9	53	0
February 16	33	0
February 23	29	0
March 1	4	0
March 8	4	0
March 16	4	0

Pay Period Week Ending	Pre-Harvest Employees	Harvest Empoyees
March 23	4	0
April 6	25	0
April 13	10	0
April 20	138	0
April 27	165	0
May 4	38	0
May 11	36	0
May 18	5	0
May 25	158	0
June 1	230	0
June 8	176	0
June 15	65	0
June 22	67	49
June 29	14	156
July 6	0	284
July 13	0	545
July 20	0	520
July 27	0	488
August 3	7	0
August 10	2	0
August 17	1	0
August 24	0	0
August 31	0	0
September 7	12	0
September 14	9	0
September 21	9	0
September 28	8	0
October 6	4	0

Pay Period Week Ending	Pre-Harvest Employees	Harvest Empoyees
October 12	10	0
October 19	8	0
October 26	10	0
November 2	9	0
November 9	12	0
November 16	16	0
November 23	15	0
November 30	13	0
December 7	16	0
December 14	63	0
December 21	66	0
December 28	51	0

TENNECO WEST, INC.
RANCHO EL DORADO
1976
NUMBER OF EMPLOYEES

Pay Period Week Ending	Pre-Harvest Employees	Harvest Employees
January 4	40	0
January 11	62	0
January 18	63	0
January 25	91	0
February 1	86	0
February 8	88	0
February 15	70	0
February 22	25	0
February 29	28	0
March 7	0	0

Pay Period Week Ending	Pre-Harvest Employees	Harvest Empoyees
March 14	1	0
March 21	11	0
March 28	10	0
April 4	145	0
April 11	162	0
April 18	14	0
April 25	161	0
May 2	39	0
May 9	122	0
May 16	173	0
May 23	149	0
May 30	37	0
June 6	66	0
June 13	0	173
June 20	0	206
June 27	0	346
July 4	0	532
July 11	0	551
July 18	16	0
July 25	3	0
August 1	5	0
August 8	13	0
August 15	2	0
August 22	0	0
August 29	0	0
September 5	0	0
September 12	0	0
September 19	0	0

Pay Period Week Ending	Pre-Harvest Employees	Harvest Empoyees
September 26	7	0
October 3	10	0
October 10	7	0
October 17	13	0
October 24	17	0
October 31	16	0
November 7	16	0
November 14	13	0
November 21	11	0
November 28	26	0
December 5	26	0
December 12	45	0
December 19	57	0
December 26	61	0

[Letterhead of Phoenix Vegetable Distributors]

TO WHOM IT MAY CONCERN

I, J. Don McGaffee, swear that the enclosed information taken from the payroll records of Phoenix Vegetable Distributors is correct.

It indicates the number of people employed in green onion harvest, who worked at least one day of the seven day period indicated.

J. DON McGAFFEE
SECRETARY/TREASURER

Subscribed and sworn to me this 12th day of January 1977.

Kathleen Hoover
Notary Public
My Commission Expires
March 29, 1978

GREEN ONION HARVEST
1974

Work Week Ending	People Employed
12/26- 1/1	202
1/2 - 1/8	168
1/9 - 1/15	224
1/16- 1/22	205
1/23- 1/29	314
1/30- 2/5	289
2/6 - 2/12	247
2/13- 2/19	266
2/20- 2/26	224
2/27- 3/5	352
3/6 - 3/12	270
3/13- 3/19	357
3/20- 3/26	332
3/27- 4/2	319
4/3 - 4/9	295
4/10- 4/16	259
4/17- 4/23	217
4/24- 4/30	261

Work Week Ending	People Employed
5/1 - 5/7	264
5/8 - 5/14	167
5/15- 5/21	274
5/22- 5/28	339
5/29- 6/4	336
6/5 - 6/11	131
9/23- 9/24	92
9/25-10/1	140
10/2 -10/8	201
10/9 -10/15	239
10/16-10/22	211
10/23-10/29	188
10/30-11/5	177
11/6 -11/12	320
11/13-11/19	323
11/20-11/26	307
11/27-12/3	351
12/4 -12/10	322
12/11-12/17	371
12/18-12/24	367
12/25-12/31	378

GREEN ONION HARVEST
1975

Work Week Ending	People Employed
1/1 - 1/7	332
1/8 - 1/14	412
1/15- 1/21	403

Work Week Ending	People Employed
1/22- 1/28	318
1/29- 2/4	306
2/5 - 2/11	423
2/12- 2/18	333
2/19- 2/25	400
2/26- 3/4	271
3/5 - 3/11	237
3/12- 3/18	271
3/19- 3/25	220
3/26- 4/1	225
4/2 - 4/8	185
4/9 - 4/15	309
4/16- 4/22	189
4/23- 4/30	319
4/30- 5/6	287
5/7 - 5/13	271
5/14- 5/20	281
5/21- 5/27	248
5/28- 6/3	296
6/4 - 6/10	268
6/11- 6/17	256
6/18- 6/28	161
9/29- 9/30	117
10/1 -10/7	204
10/8 -10/14	188
10/15-10/21	180
10/22-10/28	199
10/29-11/4	248

Work Week Ending	People Employed
11/5 -11/11	280
11/12-11/18	271
11/19-11/25	278
11/26-12/2	254
12/3 -12/9	338
12/10-12/16	328
12/17-12/23	301
12/24-12/30	296

GREEN ONION HARVEST
1976

Work Week Ending	People Employed
12/31- 1/6	245
1/7 - 1/12	242
1/14- 1/20	290
1/21- 1/27	338
1/28- 2/3	261
2/4 - 2/10	140
2/11- 2/17	235
2/18- 2/24	309
2/25- 3/2	353
3/3 - 3/9	280
3/10- 3/16	320
3/17- 3/23	348
3/24- 3/30	307
3/31- 4/6	296
4/7 - 4/13	289
4/14- 4/20	225

Work Week Ending	People Employed
4/21- 4/27	292
4/28- 5/4	303
5/5 - 5/11	249
5/12- 5/18	301
5/19- 5/25	307
5/26- 6/1	128
6/2 - 6/8	126
9/8 - 9/14	280
9/15- 9/21	244
9/22- 9/28	290
9/29-10/5	251
10/6 -10/12	256
10/13-10/19	257
10/20-10-26	228
10/27-11/2	239
11/3 -11/9	218
11/10-11/16	197
11/17-11/23	230
11/24-11/30	254
12/1 -12/7	251
12/8 -12/14	234
12/15-12/21	253
12/22-12/28	252

[Letterhead of Bodine Produce Company]

TO WHOM IT MAY CONCERN:

I, Ralph Bodine, do solemnly swear the following compilations of facts and figures were taken from the permanent official payroll records of BODINE PRODUCE Company, and that said facts and figures represents the total number of persons employed in the State of Arizona by BODINE PRODUCE Company during the years, 1974, 1975 and 1976 at least one to seven days during each pay period ending date who were either engaged in a pre-harvest or harvest activity involving cantaloupes and melons owned by BODINE PRODUCE Company.

_____
Ralph E. Bodine

In witness whereof I hereunto set my hand and official seal.

_____
Kathleen Hoover

Subscribed and sworn to me this 13th day of January 1977.

My Commission Expires March 29, 1978

1974

PAY PERIOD WEEK ENDING	PRE-HARVEST EMPLOYEES	HARVEST EMPLOYEES
4-10-74	40	0
4-17-74	37	0
4-24-74	33	0
4-31-74	38	0
5- 7-74	35	0

1974

PAY PERIOD WEEK ENDING	PRE-HARVEST EMPLOYEES	HARVEST EMPLOYEES
5-15-74	29	0
5-22-74	40	0
5-29-74	40	0
6- 6-74	60	0
6-13-74	42	0
6-20-74	35	57
6-27-74	0	276
7- 3-74	0	236
7-10-74	0	247
7-17-74	0	99
7-24-74	0	0
7-31-74	0	0
8- 7-74	19	0
8-14-74	27	0
8-12-74	0	0
8-28-74	0	0
9- 4-74	0	0
9-11-74	0	0
9-18-74	0	0
9-25-74	0	0
10- 1-74	0	15
10- 8-74	0	21
10-15-74	0	20
10-22-74	0	26
10-29-74	0	25
11- 6-74	0	22
11-13-74	0	25

1975

PAY PERIOD WEEK ENDING	PRE-HARVEST EMPLOYEES	HARVEST EMPLOYEES
4-19-75	42	0
4-26-75	38	0
5- 3-75	47	0
5-10-75	0	0
5-17-75	39	0
5-24-75	42	0
5-31-75	29	0
6- 7-75	64	0
6-14-75	38	0
6-21-75	48	0
6-28-75	44	0
7- 2-75	0	110
7- 9-75	0	323
7-16-75	0	396
7-23-75	0	325
7-30-75	0	68
8- 2-75	23	0
8- 9-75	21	0
8-16-75	23	0
8-23-75	35	0
8-30-75	28	0
9- 6-75	37	0
9-13-75	0	0
9-20-75	53	0
9-27-75	0	0
10- 2-75	0	0
10- 9-75	0	17
10-16-75	0	27
10-23-75	0	27
10-30-75	0	36

1975

PAY PERIOD WEEK ENDING	PRE-HARVEST EMPLOYEES	HARVEST EMPLOYEES
11- 7-75	0	28
11-14-75	0	27
11-21-75	0	21

1976

PAY PERIOD WEEK ENDING	PRE-HARVEST EMPLOYEES	HARVEST EMPLOYEES
4-12-76	42	0
4-19-76	50	0
4-26-76	50	0
5- 3-76	55	0
5-10-76	60	0
5-17-76	58	0
5-24-76	67	0
5-31-76	64	0
6- 7-76	57	0
6-15-76	62	0
6-22-76	55	51
6-29-76	0	310
7- 6-76	0	346
7-13-76	0	261
7-20-76	0	102
7-27-76	0	0
8- 3-76	0	0
8-10-76	27	0
8-17-76	37	0
8-24-76	38	0
8-31-76	38	0
9- 7-76	44	0
9-14-76	39	0
9-21-76	42	0

1976

PAY PERIOD WEEK ENDING	PRE-HARVEST EMPLOYEES	HARVEST EMPLOYEES
9-28-76	44	0
10- 5-76	50	0
10-12-76	45	32
10-19-76	0	34
10-26-76	0	42
11- 2-76	0	39
11- 9-76	0	41
11-16-76	0	39
11-23-76	0	45
11-30-76	0	34

[Letterhead of PETE PASQUINELLI]

JANUARY 13, 1977:

GENTLEMEN:

I HEREBY CERTIFY THAT TO THE BEST OF MY KNOWLEDGE, THE FIGURES FOR EMPLOYEES USED IN THE PRE-HARVEST AND HARVEST OF LETTUCE AND PRE-HARVEST AND HARVEST OF CANTALOUPES IN MY ORGANIZATION FOR THE YEAR 1974, ARE TRUE AND CORRECT FROM MY AVAILABLE PAYROLL RECORDS. THESE FIGURES DO NOT INCLUDE THE USE OF OTHER EMPLOYEES IN OTHER FARMING OPERATIONS, SUCH AS TRACTOR OPERATORS, IRRIGATORS, SHOVEL CREWS AND ETC:

GARY J. PASQUINELLI:
GENERAL MANAGER:

SUBSCRIBED AND SWORN TO BEFORE ME, THIS 13th DAY OF JANUARY, 1977:

C. O. STAFFORD:
NOTARY PUBLIC:

PETE PASQUINELLI

Year 1974 Dates of Year:	Lettuce:		Lettuce & Cantaloupes: Cantaloupes:	
	Pre-Harvest:	Harvest:	Pre-Harvest:	Harvest:
1/1 TO 1/8:	67	190	0	0
1/9 TO 1/15:	64	192	0	0
1/16 TO 1/22:	64	182	0	0
1/23 TO 1/29:	61	186	0	0
1/30 TO 2/5:	25	170	0	0
2/6 TO 2/12:	25	165	0	0
2/13 TO 2/19:	25	163	0	0
2/20 TO 2/26:	25	163	17	0
2/27 TO 3/5:	23	125	30	0
3/6 TO 3/12:	0	130	39	0
3/13 TO 3/19:	0	140	40	0
3/20 TO 3/26:	0	145	39	0
3/27 TO 4/2:	0	140	44	0
4/3 TO 4/9:	0	90	45	0
4/10 TO 4/16:	0	51	46	0
4/17 TO 4,23:	0	50	46	0
4/24 TO 4/30:	0	0	46	0

Year 1974 Dates of Year:	Lettuce:		Lettuce & Cantaloupes Cantaloupes:	
	Pre-Harvest:	Harvest:	Pre-Harvest:	Harvest:
5/1 TO 5/7:	0	0	100	0
5/8 TO 5/14:	0	0	120	0
5/15 TO 5/21:	0	0	154	0
5/22 TO 5/28:	0	0	163	30
5/29 TO 6/4:	0	0	80	31
6/5 TO 6/11:	0	0	40	150
6/12 TO 6/18:	0	0	30	300
6/19 TO 6/25:	0	0	15	340
6/26 TO 7/2:	0	0	0	316
7/3 TO 7/9:	0	0	0	190
7/10 TO 7/16:	0	0	0	53
7/17 TO 7/23:	0	0	0	0
7/24 TO 7/30:	0	0	0	0
7/31 TO 8/6:	0	0	0	0
8/7 TO 8/13:	0	0	0	0
8/14 TO 8/20:	0	0	0	0
8/21 TO 8/27:	0	0	0	0
8/28 TO 9/3:	0	0	0	0
9/4 TO 9/10:	0	0	0	0
9/11 TO 9/17:	30	0	0	0
9/18 TO 9/24:	48	0	0	0
9/25 TO 10/1:	100	0	0	0
10/2 TO 10/8:	60	0	0	0
10/9 TO 10/15:	200	0	0	0
10/16 TO 10/22:	284	0	0	0
10/23 TO 10/29:	279	0	0	0
10/30 TO 11/5:	160	0	0	0
11/6 TO 11/12:	160	0	0	0
11/13 TO 11/19:	110	37	0	0

Year 1974 Dates of Year:	Lettuce:		Lettuce & Cantaloupes Cantaloupes:	
	Pre-Harvest:	Harvest:	Pre-Harvest:	Harvest:
11/20 TO 11/26:	99	92	0	0
11/27 TO 12/3:	60	125	0	0
12/4 TO 12/10:	35	263	0	0
12/11 TO 12/17:	24	265	0	0
12/18 TO 12/24:	20	280	0	0
12/25 TO 12/31:	20	246	0	0

[Letterhead of Pete Pasquinelli]

JANUARY 13, 1977:

GENTLEMEN:

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GARY J. PASQUINELLI:
GENERAL MANAGER:

SUBSCRIBED AND SWORN TO BEFORE ME, THIS 13th DAY OF JANUARY, 1977:

C. O. STAFFORD:
NOTARY PUBLIC:

My Commission Expires Feb. 27, 1978

PETE PASQUINELLI

Year 1975: Dates of Year:	Lettuce:		Lettuce & Cantaloupes: Cantaloupes:	
	Pre-Harvest:	Harvest:	Pre-Harvest:	Harvest:
1/1 TO 1/7:	63	253	0	0
1/8 TO 1/14:	64	255	0	0
1/15 TO 1/21:	65	255	0	0
1/22 TO 1/28:	65	258	0	0
1/29 TO 2/4:	26	248	0	0
2/5 TO 2/11:	24	242	0	0
2/12 TO 2/18:	23	246	0	0
2/19 TO 2/25:	22	242	0	0
2/26 TO 3/4:	18	233	27	0
3/5 TO 3/11:	0	233	43	0
3/12 TO 3/18:	0	220	45	0
3/19 TO 3/25:	0	227	47	0
3/26 TO 4/1:	0	225	49	0
4/2 TO 4/8:	0	290	90	0
4/9 TO 4/15:	0	278	110	0
4/16 TO 4/22:	0	266	120	0
4/23 TO 4/29:	0	0	117	0
4/30 TO 5/6:	0	0	140	0
5/7 TO 5/13:	0	0	160	0

Year 1975 Dates of Year:	Lettuce:		Lettuce & Cantaloupes: Cantaloupes:	
	Pre-Harvest:	Harvest:	Pre-Harvest:	Harvest:
5/14 TO 5/20:	0	0	175	0
5/21 TO 5/27:	0	0	173	0
5/28 TO 6/3:	0	0	173	0
6/4 TO 6/10:	0	0	140	169
6/11 TO 6/17:	0	0	142	163
6/18 TO 6/24:	0	0	138	163
6/25 TO 7/1:	0	0	122	166
7/2 TO 7/8:	0	0	0	357
7/9 TO 7/15:	0	0	0	355
7/16 TO 7/22:	0	0	0	355
7/23 TO 7/29:	0	0	0	0
7/30 TO 8/5:	0	0	0	0
8/6 TO 8/12:	0	0	0	0
8/13 TO 8/19:	0	0	0	0
8/20 TO 8/26:	0	0	0	0
8/27 TO 9/2:	0	0	0	0
9/3 TO 9/9:	0	0	0	0
9/10 TO 9/16:	26	0	0	0
9/17 TO 9/23:	26	0	0	0
9/24 TO 9/30:	27	0	0	0
10/1 TO 10/7:	80	0	0	0
10/8 TO 10/14:	118	0	0	0
10/15 TO 10/21:	134	0	0	0
10/22 TO 10/28:	134	0	0	0
10/29 TO 11/4:	90	0	0	0
11/5 TO 11/11:	82	57	0	0
11/12 TO 11/18:	82	66	0	0
11/19 TO 11/25:	79	66	0	0
11/26 TO 12/2:	79	75	0	0

Year 1975 Dates of Year:	Lettuce:		Lettuce & Cantaloupes: Cantaloupes:	
	Pre-Harvest:	Harvest:	Pre-Harvest:	Harvest:
12/3 TO 12/9:	70	290	0	0
12/10 TO 12/16:	66	290	0	0
12/17 TO 12/23:	66	280	0	0
12/24 TO 12/30:	64	280	0	0

[Letterhead of Pete Pasquinelli]

JANUARY 13, 1977:

GENTLEMEN:

I HEREBY CERTIFY THAT TO THE BEST OF MY KNOWLEDGE, THE FIGURES FOR EMPLOYEES USED IN THE PRE-HARVEST AND HARVEST OF LETTUCE AND PRE-HARVEST AND HARVEST OF CANTALOUPES IN MY ORGANIZATION FOR THE YEAR 1976, ARE TRUE AND CORRECT FROM MY AVAILABLE PAYROLL RECORDS. THESE FIGURES DO NOT INCLUDE THE USE OF OTHER EMPLOYEES IN OTHER FARMING OPERATIONS, SUCH AS TRACTOR OPERATORS, IRRIGATORS, SHOVEL CREWS AND ETC:

GARY J. PASQUINELLI:
GENERAL MANAGER:

Year 1975 Dates of Year:	Lettuce:		Lettuce & Cantaloupes: Cantaloupes:	
	Pre-Harvest:	Harvest:	Pre-Harvest:	Harvest:
5/14 TO 5/20:	0	0	175	0
5/21 TO 5/27:	0	0	173	0
5/28 TO 6/3:	0	0	173	0
6/4 TO 6/10:	0	0	140	169
6/11 TO 6/17:	0	0	142	163
6/18 TO 6/24:	0	0	138	163
6/25 TO 7/1:	0	0	122	166
7/2 TO 7/8:	0	0	0	357
7/9 TO 7/15:	0	0	0	355
7/16 TO 7/22:	0	0	0	355
7/23 TO 7/29:	0	0	0	0
7/30 TO 8/5:	0	0	0	0
8/6 TO 8/12:	0	0	0	0
8/13 TO 8/19:	0	0	0	0
8/20 TO 8/26:	0	0	0	0
8/27 TO 9/2:	0	0	0	0
9/3 TO 9/9:	0	0	0	0
9/10 TO 9/16:	26	0	0	0
9/17 TO 9/23:	26	0	0	0
9/24 TO 9/30:	27	0	0	0
10/1 TO 10/7:	80	0	0	0
10/8 TO 10/14:	118	0	0	0
10/15 TO 10/21:	134	0	0	0
10/22 TO 10/28:	134	0	0	0
10/29 TO 11/4:	90	0	0	0
11/5 TO 11/11:	82	57	0	0
11/12 TO 11/18:	82	66	0	0
11/19 TO 11/25:	79	66	0	0
11/26 TO 12/2:	79	75	0	0

Year 1975 Dates of Year:	Lettuce:		Lettuce & Cantaloupes: Cantaloupes:	
	Pre-Harvest:	Harvest:	Pre-Harvest:	Harvest:
12/3 TO 12/9:	70	290	0	0
12/10 TO 12/16:	66	290	0	0
12/17 TO 12/23:	66	280	0	0
12/24 TO 12/30:	64	280	0	0

[Letterhead of Pete Pasquinelli]

JANUARY 13, 1977:

GENTLEMEN:

I HEREBY CERTIFY THAT TO THE BEST OF MY KNOWLEDGE, THE FIGURES FOR EMPLOYEES USED IN THE PRE-HARVEST AND HARVEST OF LETTUCE AND PRE-HARVEST AND HARVEST OF CANTALOUPES IN MY ORGANIZATION FOR THE YEAR 1976, ARE TRUE AND CORRECT FROM MY AVAILABLE PAYROLL RECORDS. THESE FIGURES DO NOT INCLUDE THE USE OF OTHER EMPLOYEES IN OTHER FARMING OPERATIONS, SUCH AS TRACTOR OPERATORS, IRRIGATORS, SHOVEL CREWS AND ETC:

GARY J. PASQUINELLI:
GENERAL MANAGER:

SUBSCRIBED AND SWORN TO BEFORE ME, THIS 13th DAY OF JANUARY, 1977:

C. O. STAFFORD:
NOTARY PUBLIC:

My Commission Expires Feb. 27, 1978

PETE PASQUINELLI

Year 1976 Dates of Year:	Lettuce:		Lettuce & Cantaloupes Cantaloupes:	
	Pre-Harvest:	Harvest:	Pre-Harvest:	Harvest:
1/1 TO 1/6:	66	234	-0-	-0-
1/7 TO 1/13:	67	246	-0-	-0-
1/14 TO 1/20:	68	241	-0-	-0-
1/21 TO 1/27:	67	240	-0-	-0-
1/28 TO 2/3:	25	189	-0-	-0-
2/4 TO 2/10:	33	177	-0-	-0-
2/11 TO 2/17:	28	185	-0-	-0-
2/18 TO 2/24:	28	181	-0-	-0-
2/25 TO 3/2:	40	166	-0-	-0-
3/3 TO 3/9:	38	173	-0-	-0-
3/10 TO 3/16:	0	159	36	-0-
3/17 TO 3/23:	0	168	40	-0-
3/24 TO 3/30:	0	164	38	-0-
3/31 TO 4/6:	0	203	87	-0-
4/7 TO 4/13:	0	200	80	-0-
4/14 TO 4/20:	0	206	90	-0-
4/21 TO 4/27:	0	0	85	-0-
4/28 TO 5/4:	0	0	130	-0-
5/5 TO 5/11:	0	0	128	-0-

Year 1976 Dates Of Year:	Lettuce:		Lettuce & Cantaloupes Cantaloupes:	
	Pre-Harvest:	Harvest:	Pre-Harvest:	Harvest:
5/12 TO 5/18:	0	0	126	-0-
5/19 TO 5/25:	0	0	132	-0-
5/26 TO 6/1:	0	0	128	-0-
6/2 TO 6/8:	0	0	94	200
6/9 TO 6/15:	0	0	88	200
6/16 TO 6/22:	0	0	94	250
6/23 TO 6/29:	0	0	86	256
6/30 TO 7/6:	0	0	0	240
7/6 TO 7/13:	0	0	0	230
7/14 TO 7/20:	0	0	0	190
7/21 TO 7/27:	0	0	0	0
7/28 TO 8/3:	0	0	0	0
8/4 TO 8/10:	0	0	0	0
8/11 TO 8/17:	0	0	0	0
8/18 TO 8/24:	0	0	0	0
8/25 TO 8/31:	0	0	0	0
9/1 TO 9/7:	26	0	0	0
9/8 TO 9/14:	27	0	0	0
9/15 TO 9/21:	31	0	0	0
9/22 TO 9/28:	32	0	0	0
9/29 TO 10/5:	90	0	0	0
10/6 TO 10/12:	130	0	0	0
10/13 TO 10/19:	154	0	0	0
10/20 TO 10/26:	160	0	0	0
10/27 TO 11/2:	136	0	0	0
11/3 TO 11/9:	120	0	0	0
11/10 TO 11/16:	117	90	0	0
11/17 TO 11/23:	115	106	0	0
11/24 TO 11/30:	110	118	0	0

PETE PASQUINELLI

Year 1976 Dates of Year:	Lettuce:		Lettuce & Cantaloupes Cantaloupes:	
	Pre-Harvest:	Harvest:	Pre-Harvest:	Harvest:
12/1 TO 12/7:	45	280	0	0
12/8 TO 12/14:	47	282	0	0
12/15 TO 12/21:	47	285	0	0
12/22 TO 12/28:	46	287	0	0

PLAINTIFF'S EXHIBIT 1

LENGTH OF HARVEST AND PEAK HARVEST SEASONS COMPILED FROM STIPULATED RECORDS PROVIDED BY SELECTED GROWERS

GRAPES	NUMBER OF WORKERS PER NUMBER OF WEEKS										PEAK HARVEST	TOTAL HARVEST
El Dorado												
1974	176	191	495	497							2	4
1975	49	156	284	545	520	488					4	6
1976	173	206	346	532	551						3	5
Boswell												
1974	587	0	205	607	567	50					3	5
1975	152	603	672	550	632						4	5
1976	478	266	177	547	539						3	5
Bodine												
1974	247	225	349	364	403	10					5	6
1975	176	170	336	365	319						3	5
1976	156	164	323	321	288	7					4	6

LENGTH OF HARVEST AND PEAK HARVEST SEASONS COMPILED FROM STIPULATED RECORDS PROVIDED BY SELECTED GROWERS

LETTUCE	(FALL)	NUMBER OF WORKERS PER NUMBER OF WEEKS												PEAK HARVEST IN WEEKS	TOTAL HARVEST IN WEEKS
		1	2	3	4	5	6	7	8	9	10	11	12		
J. A. Wood (Yuma)															
	1974	58	51	48	191	263	80							2	6
	1975													—	—
	1976													—	—
J. A. Wood (Phoenix)															
	1974	191	198	196	132	46								4	5
	1975	233	304	240	263	164	111	118	91	66	34	0	28	5	11
	1976	59	177	270	325	329	333	103	0	108				4	8
J. A. Wood (Marana)															
	1974													—	—
	1975	48	70	87	91	75								5	5
	1976	32	41	44	53	64	72	31						5	7
W. W. Norton															
	1974	131	190	106	95									4	4
	1975	229	281	237										3	3
	1976	235	281	270										3	3

LETTUCE	(FALL)	NUMBER OF WORKERS PER NUMBER OF WEEKS												PEAK HARVEST IN WEEKS	TOTAL HARVEST IN WEEKS
		1	2	3	4	5	6	7	8	9	10	11	12		
Cactus															
	1974	78	109	94	83	72	63	61						7	7
	1975	63	88	93	101	82	76	37	35					6	8
	1976	70	73	64	70	60	63							6	6
Action (Phoenix)															
	1975	60	55	111	90	87	88	97						6	7
	1976	xxx	xxx	89	107	103	71	31						x	7
(Wilcox)															
	1975	38	70	59	26									3	4
	1976	49	52	59	58	xxx	xxx							x	6
Interharvest (Phoenix)															
	1974	89	488	xxx	xxx	xxx								x	5
	1975	325	xxx	xxx	xxx									x	4
	1976	xxx	xxx	xxx	xxx	xxx	xxx							x	6
Interharvest (Yuma)															
	1974	xxx	xxx	xxx	447	217	140							x	6
	1975	xxx	xxx	xxx	593	391	138							x	7
	1976	xxx	xxx	xxx	xxx	xxx	xxx							x	6

LETTUCE	(FALL)	NUMBER OF WORKERS PER NUMBER OF WEEKS											PEAK HARVEST IN WEEKS	TOTAL HARVEST IN WEEKS
		1	2	3	4	5	6	7	8	9	10	11	12	
Pasquinelli (Yuma)														
74-75 --------//	(23 weeks)												20	23
75-76 --------//	(24 weeks)												20	24

LETTUCE	SPRING													
	1	2	3	4	5	6	7	8	9	10	11	12		
J. A. Wood (Yuma)														
1974	62	148	182	163	49								3	5
1975	127	50	92	103	29	0	0	0	60				3	6
1976	000	000	000	000	000	000	000	000	000	000	000	000	—	—
J. A. Wood (Phoenix)														
1974	144	229	267	333	313	313	255	207					7	8
1975	97	310	323	364	325	119							4	6
1976	21	29	21	0	119	124	131	128	329	306	126		2	10

LETTUCE	SPRING	NUMBER OF WORKERS PER NUMBER OF WEEKS											PEAK HARVEST IN WEEKS	TOTAL HARVEST IN WEEKS
	1	2	3	4	5	6	7	8	9	10	11	12		
J. A. Wood (Marana)														
1974	000	000	000	000	000	000	000	000	000	000	000	000	—	—
1975	84	225	160	56									2	4
1976	156	170	156	42									3	4
W. W. Norton														
1974	187	343	375	331	290								4	5
1975	118	215	394	466	206								3	5
1976	37	199	379	397	391	0	231						5	6
Cactus														
1974	71	24	82	79	70	58							5	6
1975	62	90	96	88	94	96	0	87	77				8	8
1976	59	72	67	69	72	69	75						7	7
Action (Phoenix)														
1976	25	77	66	79	49	54	56						6	7
(Wilcox)														
1976	55	45	86	121	110								3	5

EXCERPTS FROM TESTIMONY OF CESAR E. CHAVEZ

[35*]

Q Would you please state your name for the record.

A Cesar Estrada Chavez.

Q Mr Chavez, what is your present position?

A President of the United Farm Workers of America.

Q And how long have you held this position? [36]

A Since September '73.

Q What was your position prior to being Director of United Farm Workers of America?

A Prior to being President I was the Director of the Organizing Committee.

Q For how long was that?

A That was from 1966, August of 1966.

Q Mr. Chavez, could you just briefly tell us the jurisdiction of the United Farm Workers of America?

A The jurisdiction granted us by the National AF of L CIO is the jurisdiction of agricultural workers, all workers not covered, engaged in agricultural activities not covered by the National Labor Relations Act.

Q So that your Union represents only agricultural employees.

A Exclusively, yes.

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*Page number of transcript.

Q Mr. Chavez, could you tell us, when was your first contact with agricultural labor, the agricultural industry?

A Well, as you may know, I was born on a farm so that I have been associated with agriculture since my birth.

Q And when did you first work in agriculture?

A In the small farm that my father owned here in Arizona I worked as far back as I can remember until about the age of ten or eleven when we left the farm. [37]

Q And when did you leave the farm?

A In 1937 or '38.

Q And what did you do after that?

A We went to California and became migratory workers in agriculture in California.

Q Could you just very briefly tell us some of the crops? How old were you at this time in 1938?

A Eleven years.

Q Could you tell us briefly some of the crops that you worked in during that time.

A Most of the crops in California, tree fruits, grapes, field crops, grove crops.

JUDGE MUECKE: What was that last? Grow?

JUDGE CRAIG: Grove crops.

Q (By Mr. Rutkowski) How long did you continue to migrate to various types of agricultural work?

A With a couple of interruptions, from 1938 through 1952.

Q For what reason were there interruptions?

A Toward the end of the Second World War I did two years in the Navy so that was my interruption, and then around 1950 or '51 I did a few months of work in the lumber industry.

Q After you left the Service, Mr. Chavez, what did you do then? [38]

A I came to work in agriculture.

Q And how long did you work in agriculture at this time?

A I was discharged in 1946 and I worked through 1952.

Q Again, very briefly could you give us some idea of the sort of agricultural experiences you had during this six year period.

A I worked in grapes, tomatoes, a number of different tree crops, worked in strawberries, I did some sharecropping strawberries toward the end of '52, and worked in lettuce and numerous other activities, some citrus. I don't recall all of the activities but I did work in many.

Q During this period in 1962 did you have any experience at all with labor organizations and agricultural industry?

A Prior to '52?

Q Yes.

A Yes. I was a member of at least one Union, one attempt to organize farm workers around 1946, '47, and then toward 1949 we joined some strikes and were active as members, as strikers.

Q Could you tell us what Unions those were? [39]

A Well, the National Farm Workers Union was the one in 1946 and in 1949 I believe it was the same Union.

Q You said you stopped working in agriculture in 1952. What did you do after that point?

A I begain working as a field representative for a civic action group in California known as the Community Service Organization.

Q Could you just briefly tell us what the Community Service Organization was doing during this time?

A It was a civic action group among special group people in California and Arizona. It tried to stimulate the interest of the ballot box, did a lot of work in naturalization, getting Mexican people who were not citizens to become citizens, and engaged itself in legislative work and also in service work in the rural areas to farm workers.

Q What were your responsibilities with the CSO during this time?

A I was a field representative and organizer in charge of organizing farm workers, mostly in the rural areas in California, some in Arizona, and to provide those citizenship services and also to provide service

centers to develop leadership in Spanish-speaking communities, to assist them in creating an effective voice in their own government.

Q How long were you with the CSO?

A From 1952 through early '62.

Q And did your responsibilities or position change at all during that time?

A Yes, they did. They did.

Q In what way did they change?

A I started out as a field representative in 1952 and in 1958 I believe I was made the Executive Director of the organization.

Q And at that time how large was the organization in terms of staff?

A In 1958 the staff varied about from ten people—eight minimum—to as many as forty or fifty depending on the work that we were engaged in at a particular time.

Q You mentioned much of the work of the CSO was done among farm workers. Did any of the programs of CSO work deal with labor-related problems of agricultural employees?

A Yes, we did.

Q And in what areas was the CSO involved during this time?

A Through its Service Center. We tried to provide farm workers with any and all help they needed regarding their job problems. This dealt with wages, dealt with transportation, with housing, dealt with accidents on the job, dealt with complaints against labor

contractors and employers. A lot of work was done in trying to place farm workers in jobs where they had been displaced by the bracero program. We did a lot of that, and we also did some work legislatively for them.

Q In regard to the legislative involvement of the CSO in what type of legislation was the CSO concerned about?

A We were concerned with social legislation, we were concerned with the plight of workers, particularly in the off seasons, with welfare assistance, with medical aid. We were concerned with the many problems faced by them with their labor contractors and foremen and employers.

Q During your work with the CSO did you have any—

JUDGE KILKENNY: Counsel, give us the formal name of the CSO and where was it organized and to what extent did it extend over the western states.

MR. RUTKOWSKI: Your Honor, would you like me to ask the witness those questions?

JUDGE KILKENNY: Yes, if you would ask him.

Q (By Mr. Rutkowski) Mr. Chavez, what did the initials stand for—CSO?

A Community Service Organization.

Q And what was the scope of the territory that the CSO involved at that time?

A California and Arizona, generally.

MR. RUTKOWSKI: Did that include all your questions, Your Honors?

JUDGE KILKENNY: Yes.

MR. RUTKOWSKI: Thank you.

Q (By Mr. Rutkowski) During this time of the CSO, Mr. Chavez, was there any training programs in organizing among farm workers that you were involved in?

A I was involved in an awful lot of trade programs by my supervisor and by one other person who was connected with the CSO at that time.

Q And who were the persons that you had training from?

A Mr. Fred Ross was the immediate supervisor. He was in charge of organizing at the beginning, and I had extensive training under him, and in consultation with Mr. Sulvinsky from Chicago who was then, I believe, the Director of the Industrial Area Foundation, which is one of the groups that assisted in the CSO in the service program.

Q During this period with the CSO did you have [43] any experience at all in working with labor unions that were working among farm workers?

A Yes, we did, through the official program with CSO but also through our own personal initiative we assisted a number of Unions in their attempts to organize farm workers.

Q Again we are taking, I believe now, about 1952 and '62. Could you tell us what labor unions that the CSO assisted with?

A We assisted in the organizing drives by the United Packinghouse Workers of America. We assisted to some extent the Butcher Workmen Union of America. We also were active in assisting the Agricultural Workers Organizing Committee of the AF of L CIO.

Q When did you leave the CSO, Mr. Chavez?

A In April of 1962.

Q And what did you do after that time?

A I began immediately to organize the National Farm Workers Association as a Union.

Q And why did you do that?

A In my opinion during the ten years that I spent in the CSO and prior to that, my own experience as a farm worker, I was convinced that nothing could really change substantially for farm workers unless they did what most workers in America had done, was to build their own union.

Q Just exactly what steps did you take to go about [44] beginning to build a union of farm workers?

A Well, first of all I used all of my experience that I had gained in organizing people in the CSO. I concentrated my activities in the eight counties of the San Joachin Valley in California and visited literally hundreds if not thousands of workers to try to find out those workers that were predisposed to the idea of unions to try and build a nucleus from which we could start, and this work took — I spent many months visiting crews out where they were working, visiting people at home at random, distributing leaflets, and attending meetings and other social functions of farm workers wherever they were in those areas and gener-

ally publicizing the idea I was trying to build a union and calling those who were interested to join us.

Q How many persons were you working with at this time?

A In terms of staff?

Q Yes.

A In the beginning it was just myself and my wife and later on other people joined, but in the first year and a half, first year, we were alone.

Q During these experiences of visiting farm workers in the field and in their homes and various meetings, could you just tell us briefly what were some of the problems of agricultural employees that you became aware of at that time. [45]

A The problems that workers faced during that period was the low wages, the inability to bring the complaint to be heard when they thought they were right in a firing or a demotion or when they were not paid what they were promised, and those were complaints that were given toward the employer. The complaints in general had to do with the labor contractor system and generally that they could not get organized. This was the major concern of theirs, that they could not — were not able to build unions up to that point.

Q What were your objectives in all the activities that you have told us about?

A I am sorry?

Q What were the objectives? What were your objectives in all the activities you told us of farm workers and learning their problems and so forth?

A The main objective was to build a union so we could get recognition for it and then enter the collective bargaining. We thought that those were the goals that would bring substantial gains to farm workers: recognition and then collective bargaining.

Q The phases of this activity you told us about or that you are telling me about, how long did you continue in this regard? [46]

A I did a lot of the personally organizing at the field level from 1962 through the beginning of the big strike in 1965.

I did most of the service center work. By that time we had other people join us.

In 1965 when the grape strike started in Delano, California, then I became more of an administrator and supervisor of the operation.

Q Then did the activities of the organization change significantly in 1965?

A In 1965 with the beginning of the grape strike in Delano we then went into the second phase of the drive that was to request recognition for the Union and to ask the producer, the companies, to enter collective bargaining. Prior to that, we had spent most of the time on the initial organizing phase of the Union.

Q And how long did that organizing phase take?

A Well, in the Delano area and the lower San Joachin Valley, the organizing phase took from 1962 to 1965—what we called the first phase—which involved organizing not only unions but other services for the worker.

Q In 1965 you say you made your first formal demand for recognition. [47]

A Yes.

Q Before you made this demand can you tell us what specific steps or what activity the Union took to make this demand.

A We visited most of the farm workers involved in the table grape industry in the Delano and the north and southern Tulare County areas and asked them to sign recognition cards, giving us the authorization to represent them in collective bargaining. We had a series of meetings with them and then a large membership meeting, at which point it was decided we would ask for recognition and for collective bargaining.

Q What occurred when the request for recognition was made?

A Well, nothing. No one single employer answered our letter.

We then asked the California Conciliation Service to intercede and see if through them we could get the employers to answer.

We asked a number of church organizations and other Unions to call in the growers to respond to our request. We also asked the Governor to do likewise.

JUDGE MUECKE: Which government? [48]

THE WITNESS: Governor.

JUDGE MUECKE: Oh the Governor; excuse me.

THE WITNESS: Governor Reagan.

Q (By Mr. Rutkowski) And what was the result? I think there was no farm labor legislation in California at this time for labor relations?

A In 1965?

Q Yes.

A That is right. There was no legislation.

Q And what was the result of your request of the Governor for conciliation service, the churches and so forth?

A Conciliation Services sent an official to the area, but he was not successful. The church group were not successful. I believe the Governor made—interceded anyway so that the demand was totally a failure.

Q What was the organization called at this time?

A There were two organizations. Our was called—the one I was working with—the National Farm Workers Association, and the the AF of L CIO had its organizing committe also organizing.

Q What did your organization do after the request of these groups were unsuccesful? [49]

A We called a meeting of the membership and told them that the next step we thought the only thing we could do was to engage in concerted economic activity against the employers to try and get them to recognize the Union.

Since there was no law, that was the only way open to us for recognition, and the workers agreed and a strike roll was taken and we began to strike in Delano.

Q And how long did that strike last?

A Fifty-eight and a half months.

Q Was there any other economic activity undertaken by the Union during this time?

A Not immediately but after about three or four months we saw that the strike itself—we were having a very difficult time maintaining because of lack of funds and because of the abundance of strike breakers. What we did, we then engaged in the idea of a boycott.

Q What was the extent of your personal involvement in this strike during this 58 months?

A I met with the workers, their weekly meetings, [50]
every single Friday for almost five years. I met with the workers daily at the assignment of the picket duty, and then I myself visited the workers for the first two or three years almost on a daily basis.

I was responsible for administering the finances of the Union, making the signs. I was the Chief Executive Officer of the Union then.

Q Upon what growers' work was the Union demand for recognition made during this time?

A Originally on the table fresh table grape growers in the northern Kerne County and Southern Tulare County, and then later it spread through the whole industry both in California and Arizona—fresh grapes

Q Was demand made also for workers in Arizona during this time?

A Not during that time, but a few months later, yes.

Q And had authorization cards also been collected in Arizona?

A Yes.

Q During this fifty-eight months that the strike and boycott were going on, were there other activities the Union was carrying on during this period?

A After a few months the word of the strike got out throughout—it became general knowledge among farm workers so there were many demands from farm workers throughout the country but especially in California and in some places in Arizona for union organizations, so we were also involved in organizing, doing the pre- [51]
liminary work in many of the agricultural areas in the two states.

Q During this period what other areas outside the San Joachin Valley did the Union get organizing in—specifically?

A First along the border areas in California. Some border areas in Arizona and New Mexican border. The Salinas Valley. The Imperial Valley. The Coachella Valley. And then the Central San Joachin and Northern San Joachin Valley and then there were other small areas where we began to organize the preliminary stages of the Union.

Q Were there areas in Arizona other than along the border that the Union organized?

A Yes, there were areas in—well—the San Luis-Yuma Valley areas, the areas we call the Phoenix Valley area, and I believe there was one other area on the Mexican Border. I forget the exact location of it.

JUDGE MUECKE: Excuse me. We will take a brief recess.

(Recess)

Q (By Mr. Rutkowski) Mr. Chavez, when we took a [52] recess you were telling us the Union had just begun organizing in other parts of California and the State of Arizona. Could you tell us—during this time did you travel personally to the State of Arizona during the strike and boycott there?

A Yes, I did.

Q And could you just tell us briefly in terms of your experience in California and Arizona how the condition of farm workers in Arizona compared with what you found them to be in California.

A The conditions were to me very similar. The workers in Arizona were getting slightly less money in wages, but otherwise the conditions seemed to me at that time very similar.

Q During this period of strike and boycott were any elections held by your Union with agricultural employees?

A There were some elections. There was one election held in 1966 in California.

Q And by whom was that election conducted?

A I recall that election was conducted by the American Arbitration Association.

Q Was it done pursuant to agreement between the employer and your Union?

A Yes. That was the only way elections could be [53] held then because there was no law.

Q And at what time was it agreed to have this election?

A I am sorry?

Q During what period did you agree to have the election at this time?

A The election was agreed by both the employer and our Union to be held during the time when the majority of the workers were employed.

JUDGE CRAIG: Was when?

THE WITNESS: It was in the month of August in grapes at Delano.

Q (By Mr. Rutkowski) Would that be during the peak of the harvest season?

A Yes.

Q Did the strike and boycott activites eventually lead to the signing of any collective bargaining agreements by your Union?

A Eventually it did, yes.

Q And how many agricultural employers were contracts signed—with how many agricultural employers?

A There were, as I recall now, over a hundred ranches that signed contracts with our Union.

Q And when were these contracts signed?

A There were contracts signed—prior to the settlement of that dispute we had some contracts signed in wine grapes, several contracts in wine grapes, and then in 1970, early '70, we signed our first contract with fresh grapes in the Coachella Valley, and then—this must have been in March, by the middle of April, late April, we had signed with most of the employers in fresh grapes.

Q Did any of these contracts cover the State of Arizona? Grape growers in Arizona?

A Yes.

Q In the negotiation for these contracts did you yourself participate in any of the selective bargaining sessions?

A Yes, I did.

Q And could you tell us just generally how many of these you participated in?

A I would have to estimate, but I participated in well over half of them in some form or another.

Q You are saying well over half?

A Of the negotiations, yes.

Q What were some of the main areas that the Union was concerned about negotiating when these first contracts were signed?

A The areas that we were mostly concerned with were the question of recognition, worker security, union security, the question of economics—which is

wages and fringe benefits; the question of grievance procedures were extremely important, and are very important to this day. [55]

Those were some of the areas that we were concerned with.

Q Could you briefly tell us in what way the United Farm Workers structured itself or structured its organization to participate in these collective bargaining sessions?

A In the early beginning of the Union, the first convention, it was voted that all negotiations affecting workers, that worker representatives would be present. That is mandatory in a Union. So that is what we did, was to—the known procedure is to have a series of meetings with the workers on their particular ranch and get them to list their grievances and list their demands and then for them to elect a negotiating committee reflecting as closely as possible the various classifications of work done in that farm, and then reassign from the Union staff a negotiator and in some cases an attorney to work with them.

Q Were the contracts that were eventually signed ratified by the workers?

A That is also a provision in our Constitution, that contracts are not legally binding, unless and until the workers by majority vote ratify the contracts, yes. [56]

Q After the signing of these one hundred or so contracts in the grape industry in 1970 did the United Farm Workers undertake any other activities?

A We continued to organize in other areas. We were getting quite a bit of demand from the workers in the vegetable industry and we in fact had promised them because of their demands on us during the grape strike that we could not handle two strikes at the same time but that we would go and help them as soon as the grape strike was over, so that vegetables became then one of the target areas.

Q And did the Union in fact begin organizing the vegetable industry at that point?

A We were organizing prior to that point, but once the contracts were signed in fresh grapes then in terms of organizing that became the priority.

Q Could you just briefly tell us some of the crops that your Union did begin organizing in at that time?

A In the vegetable row crop industry lettuce was the number one, but it also involved cabbage and cauliflour and carrots and squash and cucumber—the basic vegetables.

Q In the Union's expanding its activity to the vegetable industry what was your responsibility in regard to these organizing activities?

A My responsibility as the Chief Executive Officer of the Union is to direct the activities, to prepare for the Executive Board programs and budgets and goals and to assign staff, assign directors for that staff, and things along these lines.

Q Did you in effect supervise the organizing in the vegetable industry?

A I would supervise—yes, supervise the directors of its projects and in many cases personally went into the field to see for myself what was happening.

Q What type of problems did the Union discover in regard to workers in the vegetable industry?

A The problems were similar to what we discovered in grapes. There were basically the same problems. There may be some things that were peculiar to that industry that we are not faced with in grapes, but generally they are the same.

Q Was the result of this organizing, the signing of any collective bargaining agreement with vegetable growers?

A Yes, we signed, I believe, four or five contracts in the few—first sixty or ninety days of that organizing.

Q Did any of these contracts cover workers in the State of Arizona? [58]

A Yes, similar to just as they did in grapes we found that many of the companies in California are also active in Arizona in lettuce and in vegetables.

Q During the period of organizing in the vegetable industry did you have occasion to visit the State of Arizona and workers at these ranches?

A Yes, I did.

Q And did you find the conditions—how did you find the conditions of these workers and the sorts of ranches they were working on in comparison to what existed in California?

A As I recall, the conditions were very similar. The complaints were the same and the workers' needs were the same. I didn't find that much difference.

Q Did you find the lettuce industry and grape industry organized in pretty much the same fashion as California?

A Yes. Not only that, but also in many cases the same companies doing work in the two states.

Q When you talk about the same companies, what sort of companies would these be?

A Well, the Tenneco Corporation is an example. Inter-Harvest is an example. The Dispoto Company out of Delano which is called here the Centennial Company. These companies I am speaking of.

Q After the signing by the Union of contracts in grapes and lettuce what other activities, if there were any, did the Union carry on during this time?

A Well, we began to organize citrus workers, for one. We continued the organizing of vegetable workers and continued organizing wine workers in the northern part of the State. Wine grape workers, that is.

Q Were there activities undertaken to administer the contracts that you had obtained in these industries?

A Yes, a large part of our efforts and resources went, then, into consolidating the contract that we had won and to provide the basis for the instruction, the education and development of the workers and the staff to carry out this new function which was the servicing of those contracts.

Q How did you participate during this time in the instruction of workers and education of workers?

A In the very beginning we took—in regard to the question of grievances which was a big problem then, I personally participated in solving those grievances and then used that work and that experience to try to instruct the workers in how to proceed.

Then I participated in educational seminars, in meetings, in written instructions, to acquaint the workers and the staff with this new work that was about us. [60]

Q In what form did these seminars for workers take?

A It would take two forms. Sometimes it would be the whole membership that would be called into a meeting to discuss grievances, the administration of the contract, to re-explain and explain once and twice and many times what their responsibilities were, also what their gains were from the contracts.

In many cases it took the form of meeting with the ranch committees. These are the officers elected by the workers in each ranch, and also the stewards, and in some cases it took—where there was a company that had two or more ranches separated, to bring them together, to meet with them, and in some cases took a general meeting approach where we would call in three, four, five thousand workers and try to get one ethic of the program across to them.

Q The contracts were signed by the grape industry in 1970. How long did they continue?

A No, they were not.

Q Why were they not renewed?

MR. KYL: May I interpose an objection at that point as to why the contract was not renewed. It seems to me that that question gets into many factors which Mr. Chavez may or may not be able to testify to.

THE COURT: Well, perhaps we can see what his answer will be and I will grant a motion to strike if it does appear irrelevant.

MR. KYL: Certainly there is more foundation required for the question, in any event.

THE COURT: What do you wish to have supplied—in terms of what?

MR. KYL: His knowledge. The factors which would give him the authority to indicate why a grower did not renew a contract.

THE COURT: All right. That is valid. Go ahead. Lay a foundation.

MR. RUTKOWSKI: All right. I didn't intend to go into this a great deal, Your Honor.

Q (By Mr. Rutkowski) Mr. Chavez, you testified that the contracts were not renewed in 1973, is that correct?

A That is right, yes.

Q Did you meet with growers, did you negotiate with growers prior to the expiration of those contracts to attempt to renegotiate them?

A What I did, in late '72 I visited most of the growers personally at their homes, at their offices, or at a mutual place, not in a negotiating manner but to meet with them personally and try and find out what their problems were. [62]

We had problems and we tried—I tried to deal with those problems ahead of time so when negotiations came we would be prepared—for instance there were some objections to the hiring hall so I went around and spent about two months doing—in large part visiting each grower independently and personally trying to get them, to see if I could get them to agree it would be a good idea to have a joint hiring hall instead of the way it was operated just by our union, and see if we could expedite the grievances so we could have them resolved quickly because that was another complaint that we had against the employers, and generally to find out what kind of problems: complaints against the staff, complaints against the growers and management personnel. We tried to see if we could solve all these questions before we came down to the formal negotiations.

Q Did you also, during this time, meet with workers to discuss negotiating the same contracts?

A Yes. During the same period of time we were trying to get the fresh grape growers in Arizona, in Coachella Valley, in the lower San Joachin Valley, the Central Valley and north San Joachin Valley to see if we could present to the employers uniform contracts and so we spent a lot of time with the workers trying to adjust the various differences because of growing seasons or whatever or because of past practices to see if we could come to the employers with one master [63]

contract and also, of course, to take the workers' demand that they were making for that year.

Q Did the workers you spoke with indicate to you whether or not they wanted the contract renegotiated?

A Oh certainly, sure, all of them did, yes.

Q Why in 1973 were these contracts not renegotiated with the growers that you had contracts with prior to that time?

MR. KYL: Excuse me. Your Honor, may I again object to the fact that the contract was not negotiated. He can certainly testify why the grower refused to negotiate with him—

JUDGE MUECKE: Do you have an opinion why none of the growers refused to negotiate the contract?

THE WITNESS: Yes.

JUDGE MUECKE: What do you base that opinion on? Before you give us the opinion.

THE WITNESS: Okay. I base the opinion on observations, on past history, and on some of the things that growers themselves told me.

JUDGE MUECKE: During this period and then some of the things you had learned by past history—what do you mean by that?

THE WITNESS: Things that were not problems to the employers in 1970 were tremendous problems to them in 1973. We also, after the contracts were not negotiated some of the growers told me confidentially and personally why they were not negotiated.

MR. KYL: My it please the Court, I would object, then, on the basis of hearsay, that any opinion he would express would be incompetent.

JUDGE MUECKE: I would overrule it. Part of the problem is if we were to gather together everyone that each of you are going to have to give opinions about things and where they derive their opinion we could very well go for two months.

The record may note your objection. Go ahead, please.

Q (By Mr. Rutkowski) Mr. Chavez, what is your opinion as to why these contracts were not renegotiated in 1973?

A The overriding factor, we believe, was that the employers had made a deal before the contracts expired to sign with the Teamsters, and as evidence proved later on, that was the case. [65]

Q Did the growers sign contracts with the Teamsters in 1973?

A Contracts expires—

MR. KILKENNY: May I again object on the basis that the question lacks necessary foundation with respect to what growers and in what crops.

JUDGE MUECKE: Well perhaps if it is not relevant because it is not specific, presumably it won't be relevant if we consider it, and if you wish to flesh out the details I guess you can do that on cross-examination.

Go ahead, please.

Q (By Mr. Rutkowski) Did some of the grape growers sign contracts with the Teamsters in 1973?

A Most—with the exception of one grower, of over a hundred contracts, only one signed—resigned with us. All of the other growers, most of the others signed with the Teamsters. Our contracts expired on midnight of April 15, 1973, and there was an announcement at 9:00 o'clock in the morning on the 16th of April that they had signed with the Teamsters in Coachella.

JUDGE MUECKE: How many contracts were involved?

THE WITNESS: In the Coachella there were about forty contracts involved and then other areas, as the contracts came to termination the same thing happened.

Q During this period when the Teamsters signed contracts with the growers was there any vehicle for any secret ballot elections to be held to determine which union of workers wanted to represent them?

A Well, it was the same because there was no law then. There was the same vehicle that we used in 1970 when the employers agreed to a form of election and when in many cases the Federal Mediation Service came—Federal Mediation Conciliation Service came in and conducted those elections. It amounted to an agreement made between us and the employers, that if the workers accepted the contracts they would also be accepting voting to be recognized by the Union.

JUDGE MUECKE: When you say Concilation Service are you talking about the Federal?

THE WITNESS: The Federal, yes.

JUDGE MUECKE: On what basis did they participate in these elections?

THE WITNESS: They came in to supervise the voting of the ratification of those contracts.

JUDGE MUECKE: I mean, was that by agreement between the employers and the Union?

THE WITNESS: Oh certainly, yes, approximately both employers and the Union, and that was [67] the pattern established for all the industry in fresh grapes. In some cases, the State Conciliation Service of California. In some cases a Committee of clergymen. And in other cases the Conciliation Service.

Q Did the growers—excuse me, go ahead.

A The Federal Concilation Service.

Q Did the growers who signed contracts with Teamsters in 1973 agree to these elections by third parties?

JUDGE MUECKE: You mean supervision by third parties.

Q Supervision of these elections by these third parties.

A In 1970?

Q Yes, but in 1973.

A Oh, no. When it was announced on the 16th day of April at 9:00 o'clock in the morning that they had signed with the Teamsters we objected strenuously, stating, how can you sign with the Teamsters when they don't even represent the workers.

And of course they said, well, we have petitions the workers have signed.

We challenged them; we said let's have elections, we had them before, let's have them again. I proposed that we would abide by any third party to conduct the [68
elections they wanted to. We would abide by any one they chose. The growers refused, of course, and the Teamsters refused.

Q After the Union and yourself, the workers, became aware of the problems that were created by not having this election process, did the Union undertake anything, any activity in regard to establishing a legislative policy regarding elections in agriculture?

A It was a tremendous shock to us to see that the work that we had and the gains that we had made with the five years, the boycott and strikes, would be down the drain because the employer made a deal with the Teamsters, so we immediately began to press for legislation that would permit the workers to vote in secret ballot elections to determine representation.

Q Did you yourself participate in discussions or drafting of such legislation in 1973?

A With our attorneys we—I more than anybody else supplied much of the information. I took a special interet. Our legal department drafted our original bill

and I collected information from the staff and from other knowledgeable sources and then I was also involved very directly with it, yes.

Q With what persons did you consult or discuss in regard to the proposal of labor legislation for the field of agriculture?

MR. KILKENNY: We are speaking of what [69
state now, counsel?

MR. RUTKOWSKI: California, Your Honor.

A In the proposal for legislation in California first the legal department with the membership of the Union, with the leadership of the Union, and then we consulted with a number of Unions, the AF of L CIO, the United Auto Workers Union, and a number of other Unions involving the National Labor Relations Act. Then we consulted with University professors. We consulted with people who have been active in organizing workers in years past and others. I forget; there were many, many people.

Q When you say "we" were you personally involved in these consultations?

A In some cases and in others not.

Q With what persons did you yourself personally consult over this type of legislation?

A Well, with membership. With the leadership of the Union, with the legal department, and in some cases we would, if time permitted we would drop in on discussions when these people would come around.

Q As a result of these discussions and so forth was a proposal regarding legislation made by the United Farm Workers?

A Yes.

Q And when was that proposal made?

A The proposal was made in 1974 in, I believe, the beginning of the session in California.

Q In regard to consideration of that legislation did you participate in any legislative hearings?

A I participated, yes, in some hearings.

Q Did you testify before any hearings?

A Yes, I did.

Q On how many occasions?

A Two or three occasions.

Q In your discussion with the Union Board, the legal staff, the ranch committees, I believe you mentioned, what were the major concerns that you, the workers or attorneys, had in regard to labor relations legislation in the field of agriculture?

A Well, that it would be—we didn't want the repetition of what had happened in the fresh grapes industry to take place. We wanted to make sure that secret ballot elections would be mandatory as a step to getting recognition. We wanted to make sure that the majority of the workers would be having a chance to decide the question of representation.

Those were overriding factors. Those were the things we were extremely concerned with.

Q In what specific ways did you believe that a law would assure the majority of workers could participate in the elections? [71]

A We felt that to accomplish that it would have to be a time limit between the time the petition was presented for the election and the time the election was held and that nothing should interfere with the calling off of the election and that complaints and hearings and other matters, issues that arose during the organizing or during the actual election, could be handled after the election.

Q Were there any other concerns of the Union expressed in its proposal for legislation other than the timeliness of the elections?

A Well the timeliness was one of the concerns. There were others. The question of the unit was extremely important because we had seen in agriculture that there was a number of cases where the minority group workers was not getting what we call the prime jobs and that they were relegated in many cases to the stoop labor positions. We did not want to separate those units where one unit would be composed of entirely the stoop labor operations and the general labor operations and other unions be composed of some of the other better jobs, so one of the arguments was to create one unit for the whole ranch, because of what we called in those times the creating of economic ghettos relegating minority group people to the [72] shorthandled hoe and stoop labor jobs. And that if there were more than one unit, then the probability of having more than one union would be involved and

then the workers would not be able to be promoted on to the better jobs like truck driving and irrigation and such jobs.

Q After this law was proposed were you personally aware of the process of advocating this law before the legislature and with other interests involved?

A I don't understand.

Q Were you aware of the steps the Union was taking to have this legislation passed?

A Oh, yes.

Q Generally, tell us how, in what fashion the law was eventually adopted.

A Well, we first selected a sponsor and then we submitted to what is called the legislative analyst in California, and they made a prediction of the cost and also what is in conflict with other laws and whether it is unconstitutional or not, and then we went and got the support of other legislators and we got support of the Governor and then began the process that was introduced, the hearings were held, and it went through the various processes.

Q During this process was there any interrelationship between the Union and agricultural interests that were concerned about this legislation?

A Well, there were other interests that were against the legislation, or parts of legislation. There was a lot of opposing testimony at these hearings.

It came to a point where we couldn't get the law in 1974 so we tried again in 1975.

Q And was the law passed in 1975?

A Yes, but it was a compromise bill because again it hit a snag or it couldn't go any further because the agriculture interests were against it. And so with the intervention of the Governor—he called both the Unions and the employers, and we agreed to a compromise bill and once the agreement was made it was very quickly adopted by the State Legislature.

Q You say the bill was passed in 1975. Was a compromise measure agreed to between the Union and agricultural interests?

A Yes. The most—I think all of the major agricultural associations, organizations in California and the Teamsters Union and our Union and AF of L CIO Union agreed to it.

JUDGE MUECKE: What does this line of testimony go to in this case?

MR. RUTKOWSKI: Your Honors, that was actually the end of that line. I was going to ask Mr. Chavez what were the major provisions of that law in regard to legislation, and the line of testimony up to this point was to give some indication that it had been agreed upon by interests other than just the Union. [74]

JUDGE MUECKE: All right.

Q (By Mr. Rutkowski) Mr. Chavez, are you aware of the provisions of the California law that was adopted in 1975 in regard to conducting of secret ballot elections for agricultural workers?

A Yes.

Q Could you just very briefly tell us what are some of the major provisions of that law in regard to conducting elections in regard to how they affect the organizing of farm workers in the agricultural industry?

A Yes.

MR. KYL: Excuse me, may I interpose an objection here, please, Your Honor, as to how the California Act may work in California I really fail to see as relevant to how the Arizona law is working in Arizona.

JUDGE MUECKE: What is the relevancy as you see it?

MR. RUTKOWSKI: Your Honor, Mr. Chavez has earlier testified that one of the major provisions of such an Act would be timeliness of elections. I believe this question will give some indication of how that problem could be handled and actually was handled in this sort of legislation. I think later we will be able to show that these same protections are not present in the Arizona Statute.

(Brief suspension of proceedings)

JUDGE MUECKE: You may go ahead. I think, though, that the objective of whatever you do presumably is based on the fact that you are presenting Mr. Chavez as an expert in his field. I don't know that just presenting comparison of two laws will do it unless the comparison in and of itself in his opinion—in a sense, I suppose you are trying to do a Brandeis brief thing here and flesh out the words of the law here with the

impact or significance they have in actual operation based upon the opinion of an expert. Is that what you are trying to do?

MR. RUTKOWSKI: In some regard, Your Honor.

JUDGE MUECKE: But all these essentially have to relate to a Constitutional question, you appreciate that.

MR. RUTKOWSKI: Yes, I do, Your Honor.

JUDGE MUECKE: So go ahead, if you do it on that basis.

MR. KYL: May I voir dire the witness for one question.

JUDGE MUECKE: Yes.

MR. KYL: Mr. Chavez, do you consider yourself [76] an expert in interpreting the Arizona Employment Regulations Act?

THE WITNESS: I am not an attorney—in terms of interpreting the law, its legal contents, no. But in terms of dealing with the practical applications I think I can be an expert, yes.

JUDGE MUECKE: I don't think that we are interested nor do I think this witness is being offered as a constitutional expert. I think he is being offered as he has just expressed his view, on the practical effect based upon his experience and his opinions and to that extent we are willing to hear it.

What did you wish to say?

MR. KYL: Well, Your Honor, I believe the witness has previously testified that he does not consider himself to be competent to testify as an expert with respect to the interpretation of the Arizona Act, as to how it operates, and these questions go to how the California Act operates. Perhaps he is an expert on that, I don't know, but—

JUDGE MUECKE: Well, I have indicated to you what I think is relevant, and if his testimony doesn't fulfill that objective then of course it will be irrelevant and we will disregard it. Go ahead.

Q (By Mr. Rutkowski) Mr. Chavez, in regard to the actual operation of the California Statute in organizing elections for farm workers, would you just briefly tell us what you think are the major provisions of the California Farm Labor legislation regarding elections?

A Well, you have to qualify for the petition for an election which is fifty per cent of the work force signing authorization cards, and then the election is held and you have to get the majority of people voting for the Union.

Q In regard to the practical operation of that law, in assuring some timely election, are there any provisions that you consider significant?

A The most significant provision is the time limit, that after the petition is presented an election has to be conducted within seven days, and that is the protection so that the majority of the workers will be able to vote, and the other one is that there has to be—that the election has to be conducted during the peak season. That is where fifty per cent or more of the total number of employees are actually working when the election takes place.

Q Are you saying the election can be held only at the peak times?

A Yes.

JUDGE CRAIG: When you refer to peak season you are talking about the peak of the harvest season? [78]

THE WITNESS: The peak of whatever—in the most cases it is the harvest season; in some cases it is the pre-harvest season.

JUDGE MUECKE: It is when the majority of the employees are employed?

THE WITNESS: Correct.

JUDGE MUECKE: Are going to be employed during that particular period?

THE WITNESS: That is correct.

JUDGE MUECKE: You have expressed an opinion on these being the most significant provisions. Are you going to go on to have his opinion as to why that is so?

MR. RUTKOWSKI: I believe at some later point, Your Honor, yes. This is primarily foundation.

JUDGE MUECKE: All right.

Q (By Mr. Rutkowski) In regard to the experience of your Union, United Farm Workers of America, in operating under this law in the last year or so, Mr. Chavez, has this law had an effect on the ability of your Union to organize farm workers in California?

A A tremendous effect. It has made organizing legal for one and it has given workers a protection to be recognized through a procedure by the State and the impact is being considerable.

Q Do you know how many elections have been held under that law?

A In the first five months of the law in operation from September 1975 through the end of January, '76, over 400 elections were held.

Q And how many workers were involved in these elections?

A Approximately 40,000 workers voted.

Q And how many of these elections did the United Farm Workers participate in?

A We participated in almost all of them. Ninety-nine per cent of them we were participants in.

JUDGE MUECKE: I am sorry, how many elections were held?

THE WITNESS: Over four hundred.

Q (By Mr. Rutkowski) As a result of these elections has your Union been able to negotiate more collective bargaining agreements since the passage of this Act?

A More—many more agreements, and we are in the process of negotiating even more agreements. There is a tremendous amount of difference between the outlook of the employer and the Union toward adjusting their differences in terms of the Labor Relations in agriculture.

Q Mr. Chavez, during the period that you just described to us, have you ever had occasion to testify before any governmental bodies on conditions of farm workers or organizing agriculture employees? [80]

A Yes, I have.

Q Limiting it now to Governmental bodies or agencies, before how many of these have you testified since you began organizing the United Farm Workers Union?

A We testified before the U.S. Senate Committee on Agricultural Labor a couple of times, we testified before some of the House Committees. We testified in California in the Assembly, the State Senate.

Q Are there any other Governmental bodies that you have testified before?

A Before Commissions, before investigating committees. Both the Federal Congress and State Congress, yes, numerous occasions.

Q Were you invited to testify at these hearings?

A In most cases, yes.

Q But when you say "when we testified" are you referring to yourself personally, that you personally testified?

A Yes.

Q And in what capacity did you testify before these committees?

A I testified as the President of the Union and as an expert in this field. [81]

Q During approximately the same period since 1965 to the present have you been invited to lecture before any groups or bodies on farm workers, conditions of agriculture in this country, organizing the farm workers, labor relations matters?

A Yes, many, many.

Q Could you give us some approximate number of how many groups or schools that you have testified before?

A Hundreds. I don't know exactly. Very many.

Q Could you give us some brief examples of groups that you have testified before or spoken to regarding farm labor?

A Universities. Before legislative bodies of other countries. Before religious assemblies. Before professional groups. Before civic groups. It is a whole variety of groups in the country.

Q You mentioned universities that you have spoken at. Could you please just give us the names of some of the universities that you have lectured at.

A Most of the universities in California. Harvard. Yale. Columbia. City College in New York. Michigan State University. Ohio. Just many, many.

Q I take it you would lecture just in regard to farm labor in this area?

A Farm labor, the conditions on farm work and the Union and its program.

Q You mentioned you testified before a legislative body of some other countries. Could you please list those?

A Yes. We testified before a group of Canadian congressmen. They are members of Parliament. We testified in Norway before a Committee, testified in Sweden, met with some members of Parliament in London, talked to some people in Mexico.

Q You mentioned you also have spoken before some civic groups. Could you give us just a general idea of what some of those specific ones were.

A Civic and political groups. Democratic clubs. Before civic groups representing minority groups, the NAACP and similar groups.

Q You also testified, Mr. Chavez, that you had appeared and spoken before some religious bodies. Could you give us a few of those that you have testified before.

JUDGE MUECKE: Is there some reason? Is there going to be a challenge to this witness as to his experteses in this field?

MR. KYL: In what field, Your Honor? Testifying before universities?

JUDGE MUECKE: No. Please.

MR. KYL: Well, no. I don't know what questions he is going to be asking.

JUDGE MUECKE: Perhaps if we have witty remarks we could do it up here. But can you limit what you are asking him to experteses in the field of agricultural labor and the laws pertaining thereto. That is what we are here for.

MR. KYL: We certainly will not deny the fact that Mr. Chavez can testify to a great deal of things that he has observed and maybe in some areas as an expert. Beyond that, it will have to depend upon what questions are asked.

JUDGE MUECKE: All right, but I mean, do you feel enough foundation has been laid—I know you are not going to agree he is a legal scholar and we don't feel he is either and have already expressed that opinion. But in terms of his knowledge of the field, based on what he has testified to so far, do you wish this to continue?

MR. KYL: I have no objection to this line of questioning continuing because I probably will object to his ability to express certain kinds of opinions.

JUDGE MUECKE: All right.

MR. RUTKOWSKY: Your Honor, I actually only have two more questions in regard to this. I think we could perhaps end.

JUDGE MUECKE: Go ahead, then. [84]

Q (By Mr. Rutkowski) Mr. Chavez, you testified you have appeared before various religious bodies, testified about farm workers. Could you please tell us what some of those were.

A Before national conventions of some of the church denominations in the United States. Before pre-senates and sister organizations. Before the House of Bishops of the Episcopal Church. Before the Commission on Peace and Justice in Rome. The Worldwide Commission from the Papal Commission. Before just local church groups.

Q Have you had an occasion during this period to also write any articles or other pieces regarding agricultural labor and specific problems in that field?

A From time to time newspapers have asked that I write articles on the subject and I have written some, yes.

Q And could you just briefly quickly give us an idea what some publications you have written in—such articles in.

A In California, one of the leading San Gabriel newspapers, the Los Angeles Times, I believe one of the San Francisco newspapers, the Chronicle, and some of the newspapers—the Sacramento Bee, the Fresno Bee, the Long Beach Daily, and a few others.

MR. RUTKOWSKI: We have no further questions in regard to this area.

THE COURT: We will take a recess until 1:30.

(Noon recess)

* * *

AFTERNOON SESSION [86]

* * * *

JUDGE MUECKE: Go ahead, please.

Q (By Mr. Rutkowski) Mr. Chavez, you testified earlier this morning that the United Farm Workers and you yourself personally were involved in proposing and lobbying for labor relations in agriculture in California, is that correct?

A Yes.

Q And does that legislation provide for secret ballot elections for agricultural employees?

A Yes, it does.

Q And you have already testified that your Union has already participated in over 400 of those elections, is that correct.

A That is correct.

Q Just very generally, would you tell us, please, what are the esstential stages, under the California Department of Legislation, by which a union practically obtains recognition under that law.

A Well, first of all a petition for an election has to be filed and all the work that goes with it to obtain the signatures for the petition. An election is held, and then if a union wins the election the Board will certify the union as the collective bargaining agent.

Q Now these four hundred elections in California, during what part of the season were they held?

A They were held—under California law they must be held at the peak season. That means when at least fifty per cent of the majority of the workers are working, fifty per cent or more, the election can only be held during that time.

Q In regard to the participation of your union in these four hundred some elections, could you please tell us what has been your personal responsibility in regard to those elections?

A The supervision and the administration of the campaigns and the work that goes with it in terms of the programs and the dealing with the organizing, with the budgetary matters, with the staff assignments, dealing with the legal questions that come up, the legal department and so forth.

Q As part of the administration and supervision of these election campaigns and these four hundred elections, are you personally aware of various procedures that were necessary for organizers working, actually working, with farm workers to perform?

A Yes.

Q Now through what process did you receive information of these procedures or become aware of what was taking place in the field in preparing for these elections? [88]

A Well, I was personally involved in some of the organizing for the pre-petition work and then, of course, through the administration of the work that I do in that connection. So that I have a very good knowledge of what is entailed during that period.

Q And by what means do you receive information from your staff in regard to organizing these elections?

A In constant various ways at meetings, via telephone, in on the spot meetings in areas where they are organizing. It comes through conferences to deal more effectively and more efficiently with the campaign to organize the workers.

Q And what has been the purpose of your obtaining this sort of information from your staff about organizing these elections?

A Well, the purpose is to be able to—I have to make decisions. I have to set policies. I have to go to Executive Boards of the Union and ask for policy decisions where such policy is lacking. So I need information to make decisions, basically.

Q As a result of the meetings eventually you had with your staff and your personal involvement in some of the pre-petition campaigns, I believe you mentioned constant telephone contact with your staff in the field [89] and these means of keeping abreast of what was going on in the elections.

Do you have knowledge of how long it has taken the United Farm Workers to prepare to petition in pursuit of a valid election under the California Act?

A Generally from the time that we start the organizing drive and gathering the petitions until such time that we have enough in our opinion to be able to win an election. That is between three and six weeks.

Q This three to six week period is from—up until the time petitions are filed, is that correct?

A That is right.

Q What are some of the activities, procedures that union staff must perform during this period to enable them to qualify for an election?

A There are a number of functions that have to be performed. You have to find out where the employer is, find out if he started working, find out where he is going to be at peak period in that activity, find out if he has more than one location, find out about the various job classifications and where the people work and who they are and where they live.

You have to go through what we call an educational period to get the workers to answer all the questions. There is the element of fear that is almost [90] always present. You have to overcome that and get the cards signed, and then you have to go into the issues that the workers have, find out what other things they are mostly dissatisfied with, what are the strong points and the weak points in organizing that ranch.

There is a number of things that have to be dealt with.

Q Is it true that each of the steps you just listed were steps that had to be accomplished prior to petitioning for the election?

A Well, before we can get enough cards—and by this I don't mean enough cards by the regulation of the law—but enough cards so that we are pretty sure we are going to win the election when we go into the election.

We need to do all those functions to be able to get enough signatures and be able to educate the worker and deal with his fear, explain the protection under the law so that it takes all of that work.

* * *

Q (By Mr. Rutkowski) I would like to direct your attention to a couple of the items that you just listed in terms—you mentioned that you had to learn who the employer was and where the ranches are located. Could you please give us some idea from your experience as to just what specific problems are involved in doing that.

A One of the problems is that, as you may know, the ownership in land in California, or at least the business of farming, changes hands very rapidly, and so when we think we are organizing a particular company we were sure was harvesting that particular plot of land, turns out it is a different company now. By that I mean we have to be sure that we have the right company. Otherwise we will have the wrong name on the petition.

Also, sometimes they will farm two different ranches in the same locality—not contiguous but the same locality. So we have to find out how many ranch operations they have and we have to locate them. We have to try to find out as much as we can ahead of time where they are going to be working which particular day so we can find them. Trying to find a ranch in Delano, a grape ranch, if you don't know the area or it is a new employer and if they have more than one ranch or they change the crew and you miss that change, it will take you all day to find it, because we

are dealing with hundreds of square miles of vineyards.

Q You also mentioned there are problems involved in determining who the workers are for a particular employer and where they live. Could you give some idea what are the specific problems involved in this process?

A Yes. Well, that also goes to who is farming, who owns the operation at that time, because there is a lot of leasing going on. Also, we need to find out who the workers are so that we can visit them at home. We have to have a good idea of what their job classification—whether they are irrigators or truck drivers or lettuce harvesters, for example, to be able to deal with the specific problems they may have.

Q Another fact you mentioned was a period of I believe you said educating workers and preparing them for possible retaliation from the employer. Just what time elements are involved when you are preparing for an election that relates to these matters. [93]

A Our experience is that we get a certain amount of cards very quickly and then—but not anywhere near enough to qualify or win the election.

After that, then, to get the rest of the cards we have to deal with the workers' fear in many cases, his uncertainty about the law to what extent he is protected, so in order to get the remainder of the cards and be reasonably sure they will vote for the Union we need to then go into a lot of education about their rights under the law and that if they are—most often they now know that a friend of theirs or a relative or someone that they know was fired because of Union

activity. They are very worried about that, so we have to reassure them that there are these rights under the law and that there is nothing to be worried about.

* * *

Q (By Mr. Rutkowski) Mr. Chavez, you told us [96]
that this pre-petition activity averaged about three to six weeks in California. Just briefly tell us what factors, if any, in your experience there have been that would either cause that to be longer or shorter within that period.

A We just talked about the employers' attitude toward the union. If it is a good attitude and he is willing to not interfere with the process, it goes very quickly and if he does interefere it takes more time.

* * *

Q (By Mr. Rutkowski) Mr. Chavez, referring now [10
to Section 23-389, which is on Page 15, Line 9, the [10
copy of the law—

JUDGE MUECKE: Page 15 Line 9?

MR. RUTKOWSKI: Yes—provided to the Court, the section entitled "Representatives and Elections".

JUDGE MUECKE: It might be a good idea if you had one of those laws marked so that the record would always reflect what exhibit we are talking about, because I would think there would be an appeal whichever way this case goes, and the record ought to show what we are talking about.

THE CLERK: We have this marked as Plaintiff's Exhibit No. 2 for identification.

JUDGE MUECKE: All right. Is there any objection to having it in evidence?

MR. KYL: No, Your Honor. If that is a correct copy of the Act, we have no objection.

JUDGE MUECKE: I assume it is.

MR.KYLE: It certainly appears to be.

JUDGE MUECKE: It may be in evidence then, Plaintiff's 2, and it is there for reference that either side can use so that we will know for the record what we are talking about.

Q (By Mr. Rutkowski) Mr. Chavez, this section is entitled "Representatives and Elections." I would like [106]
to direct your attention, if I may, to Page 16, Line 1, Section C.

JUDGE KILKENNY: Section C?

MR. RUTKOWSKI: Section C-1, Your Honor.

THE WITNESS: Yes.

Q (By Mr. Rutkowski) Have you read the entire Section—Section 1 also?

A I am sorry?

JUDGE MUECKE: It seems to me there are two ways to approach this. One is to have the witness react to language of the Statute. The other one is, keeping in mind what you want to prove by the facts that are admitted in terms of the legal effect of those facts, would be to have him testify about what in his experience is a requirement from his view and background and all the rest in order to have a union—a group of

people exercise such rights as amount to a constitutional question, and then you would argue from his testimony as to the legal effects of his testimony as would the defendants, and I would assume that is the direction which you are trying to go.

Do you follow what I have said?

MR. RUTKOWSKI: Not entirely, Your Honor.

JUDGE MUECKE: Well, you are here today and the next four days to have your witnesses and your evidence show that the effect of this Act is such as to violate various Constitutional rights so if you are going to have the witness testify, his testimony ought to be evidence from his point of view, his background, his experience, which would be relevant to what you are trying to do, to show how this Act frustrates Constitutional rights.

MR. RUTKOWSKI: I understand.

JUDGE MUECKE: So however you do it that is the direction you have got to go if you are to make your case.

JUDGE KILKENNY: What particular language in C-1 are you pointing to, counsel?

MR. RUTKOWSKI: That language which says that a petition—

JUDGE KILKENNY: What line?

MR. RUTKOWSKI: Line 7—7 and 8, particularly 8. ". . .Thirty per cent or more of the number of agricultural employees in the unit in question either wish to be represented—"

JUDGE KILKENNY: All right.

Q (By Mr. Rutkowski) Mr. Chavez, have you had a chance to read Section C-1?

A Yes.

Q In regard to your understanding of that language as to how it affects the practical procedures of organizing farm workers for an election under this piece of legislation, how does that compare to the experience you just testified about under the California Act? [108]

MR. KYL: Excuse me, Your Honor.

I must interpose an objection based upon foundation and also based upon conjecture and speculation. There has been no indication that the witness is familiar with organizing under this Act in Arizona. In fact he has specifically responded to one of the Court's questions that he has no familiarity with organizing in Arizona under this Act, so the comparison could not possibly be made other than being based on pure speculation.

JUDGE KILKENNY: Couldn't he compare the two statutes, counsel, with this background that he has here?

Of course, we are supposed to compare it, too, and our comparison will ultimately count. But we seek expert opinions on a good many things, even on questions of law; it is permissible. Particularly the law of another State, as to how it might affect us, how it might be compared.

So wouldn't you think that in this case, with all that we have before us now—whether it is relevant or not may be another question—but with all we have [10
before us now don't you think we should have some comparison between California and Arizona?

MR. KYL: With all due respect, Your Honor, I disagree, and I will tell you why, and this is critical to the whole case so I do think it deserves a minute here.

The witness has testified about his experiences in California and how the California law has worked. But what is critically missing from his ability to express an expert opinion about Arizona is any experience organizing under Arizona, under this law. There is none. And furthermore there are significant differences between what is necessary to accomplish organization in Arizona and what is necessary to accomplish organization in California, and there has been no foundation indicating that the experience is the same or where the differences are.

JUDGE KILKENNY: Well, he did testify early in his testimony that he thought the two states, that the problem in the two states—I don't think he said were identical but were generally the same, or something like that.

JUDGE MUECKE: I don't think we know the precise matter to which he is responding. Now we just know that he is responding to C-1. If we would have a [10
more precise question, if you would pluck out of C-1 what it is you want him to answer, then we would know what he is giving an opinion on as opposed to giving a legal opinion.

"For example," you could say. Then they would know whether or not they believe you are stating the question correctly, based upon the Statute itself, and we would know how to rule on it. Do you follow me?

MR. RUTKOWSKI: Yes, Your Honor.

JUDGE MUECKE: In other words, you are the lawyer, you going to say to him, This law provides for so and so. In your experience what effect does this have, and so on and so forth.

Do you follow me now?

MR. RUTKOWSKI: Yes, I do.

JUDGE MUECKE: I think if you do that we will be all right.

Q (By Mr. Rutkowski) Mr. Chavez, referring to Page 16 Line 8, that section which says that a petition shall include thirty per cent or more of the number of agricultural employees in Arizona. Does this requirement in Arizona have the same practical effect that the qualification provisions of the California Act which you have already testified about have?

A It would have, in my opinion, the same practical [111]
effect, yes.

JUDGE KILKENNY: And again now, what would you call a similar or a like provision in the California Statute? Is there a provision as to thirty per cent or—

THE WITNESS: Fifty per cent, Your Honor.

JUDGE KILKENNY: What?

THE WITNESS: Fifty per cent.

JUDGE KILKENNY: Fifty per cent?

THE WITNESS: Yes, in California.

* * *

Q (By Mr. Rutkowski) Mr. Chavez, you testified that the Arizona Act requires a thirty per cent showing of interest, is that correct?

A Yes.

Q Now in terms of factual basis of how you and your Union would — what you would have to do to obtain authorization cards from thirty per cent of workers, would the steps you would take in that process be the same as the ones you described under the California Act?

A I think they would be pretty much the same, yes.

Q And would you please tell us what steps — and based upon your experience in over 400 of these elections, in obtaining a percentage of authorization cards for a showing of interest — what practical steps your labor organization would have to take to obtain this thirty per cent?

JUDGE MUECKE: Isn't that what he has already testified to?

THE WITNESS: Yes, pretty much what I testified to.

JUDGE CRAIG: It is the same, isn't it, except you only have to have thirty per cent in Arizona where you have to do fifty per cent in California. So your job is increased by twenty per cent in California, is that right?

THE WITNESS: I need to get a clarification of the question. Thirty per cent to qualify for an election but not thirty per cent to organize workers. They are two different things.

JUDGE MUECKE: You testified previously it takes three to six weeks, and that is the time period you are referring to to get ready to get the petitions from the time you start.

THE WITNESS: Your Honor, I said to be able to win an election.

JUDGE MUECKE: Well, is that the answer you are giving him now?

THE WITNESS: He is asking me, I think, how long does it take to get thirty per cent, which is different than what it takes to win an election. I am trying to clarify that.

JUDGE CRAIG: Maybe you would have to get over fifty per cent to win the election; right?

THE WITNESS: Well, we in California say, we don't like to come with less than eighty to ninety per cent. Otherwise we are wasting everybody's time and money.

JUDGE MUECKE: I thought you said before, even though it is fifty per cent on the petitions in California you do the three to six weeks because you don't want just fifty per cent, you want enough by the time you present the petitions to win the election.

THE WITNESS: We would need eighty in either case. If we were organizing in Arizona under the law, we would come in with eighty — possibly ninety per cent to make sure we would win or have a good chance to win.

JUDGE CRAIG: So whether it says thirty or fifty really doesn't make any difference with respect to your problem; right?

THE WITNESS: That is correct.

Q (By Mr. Rutkowski) I am not entirely sure what the record reflects in regard to this, so I am going to ask this:

In regard to this requirement, Mr. Chavez, based upon your experience in California, in organizing Arizona farm workers in your opinion how long did it take under this provision in the Arizona Act referred to to obtain the number of authorizations you would normally obtain before petitioning for an election? [118]

MR. KYL: Excuse me. Again that is the same question and I have the same objection; how long does it take.

JUDGE MUECKE: No, it isn't. He is doing it on his experience and he stated — as Judge Kilkenny told you a moment ago — the conditions are pretty much the same not only in Arizona but in California and Arizona. So overruled.

JUDGE CRAIG: But I think you ought to tell us what the variables are. What he wants is eighty per cent of five thousand workers where over here it might be a thousand workers. I doubt if there would be that many in any ranch in Arizona, but maybe 300. So if it

takes him three to six weeks in California to get eighty per cent and he has only got a hundred people or three hundred people to work with in Arizona on a given unit, it is going to take him a lot less time.

MR. RUTKOWSKI: I understand that, Your Honor. I was going to get into some of the variables. I am sure Mr. Kyl will raise some of them on cross-examination, and I believe by the time we finish we should have a very good idea of just what practical problems are involved in this Act as well as the California Act.

JUDGE CRAIG: Why don't you ask him what the variables are that he is confronted with in responding to your question? He can't on that bare bones question tell you it is going to be three to six weeks or six to eight weeks or what it is, because he doesn't know what the problem is. [119]

Q (By Mr. Rutkowski) Mr. Chavez, does the fact that the Arizona law requires but thirty per cent to petition for such election while the California law requires fifty per cent alter your opinion as to how long it would take in terms of an average time to organize farm workers to participate in the election, to petition for an election?

A. No.

Q And why is that?

A Because our union is not just satisfied with qualifying for an election; we want to win an election. It is too costly to get involved in the election with not enough organization done, not enough commitment from the workers to be able to have a reasonable chance of succeeding. If you come in with a lesser

amount — if we came with thirty per cent of the workers — chances are we would never win the election either here or in California, but the consequences and the expense and the time involved in litigating whatever disputes would arise as the result of the election would be the same.

* * *

Q (By Mr. Rutkowski) Mr. Chavez, when does the gathering, the collection of these authorizations from workers take place at a particular agricultural employer?

A We try very hard to begin at the point that the employer begins his operations, which is going to yield the peak season, the peak amount of workers, and we need to start as quickly as we can taking in consideration all the work that must be done, because otherwise we find out if we don't do that then we won't have enough time to hold the election because the season will pass and we won't be able to qualify in that period.

* * *

JUDGE CRAIG: Does your experience allow you to have an opinion on whether your Union is entirely unique in this respect as compared to other unions and AF of L CIO, for example?

THE WITNESS: We have talked to many, many unions in the last fifteen years and from our conversation with them I would say that we are unique, yes,

not only in seasonality of employment but intermittent employment within that season and then the migrancy factor added to that.

* * *

Q (By Mr. Rutkowski) Mr. Chavez, in your experience in California does that law, administration of that law provide for access of union staff members into the field to talk with agricultural employees? [126]

A Yes, it does. It has many restrictions but it does provide some time with which we can speak to the employees.

Q I would like to ask your opinion now, assuming you had to organize, take the same steps to collect the petitions, the authorization signatures that you testified in California but were denied access into the field to talk to workers while they were in the field, based upon your experience what is your opinion as to how that would affect the time period to gather these authorization signatures.

A Well, it would take longer because of mainly two reasons, One is that we could talk to all the employees at lunch while they are together. If we don't have the access rule then we would go to find out where they live, visit them individually. The other thing that it takes less time is because if we can go into a field when the workers are eating and not interfere with the production or with any of the crops and on a limited basis talk to them while they are eating lunch, it tells the workers that it is okay, it gives a legitimacy to the work we are doing, that it is okay to organize them,

that it is not against the law. Those two factors tend to [127]
make the organizing shorter where you have the access.

Q In the 400 some elections in California have there been experiences where agricultural employers denied access to union personnel despite the provisions of the law?

MR. KYL: Excuse me, if I may I really should object to the last question as being irrelevant because there is no indication of what the situation in Arizona is. This is all about California.

JUDGE MUECKE: I think if you are going to have his opinions on the effect or what needs to be done to have meaning it should relate to the particular Statute here.

MR. RUTKOWSKI: That is why I asked the hypothetical question, because I believe it would be an area where there is a mixed issue of fact involved, because I believe at a later point in oral arguments then we would argue the Arizona Act in regard to whether or not it does provide access.

JUDGE MUECKE: Well, are you saying that there is no provision in the Arizona law that decides the access matter one way or the other? I mean if there is a provision in the law —

MR. KYL: Excuse me. First of all, in California it is not in the law.

JUDGE MUECKE: I am asking about Arizona law.

MR. KYL: In Arizona there is nothing in the regulation or law that would prevent access to field workers, as far as I know.

MR. RUTKOWSKI: That is one of the specific legal issues we have alleged, that the Act does in fact deny access.

JUDGE MUECKE: Is there a provision in the Statute governing access? That is what I asked. Is there?

MR. RUTKOWSKI: Yes, Your Honor.

JUDGE MUECKE: What provision is there, do you know?

MR. McCRORY: Page 10 Line 6 through 12.

JUDGE CRAIG: What is it?

MR. RUTKOWSKI: Page 10 Line 6 to 12, Your Honor.

(Temporary suspension of proceedings)

JUDGE MUECKE: Generally given trespass laws — I think that would effectively take care of the matter, unless there were law to the contrary. Go ahead. Your objection is overruled.

MR. KYLE: My objection is this: that denying [129]
facilities is not the same thing as denying access. I don't think there is any experience in Arizona in point.

JUDGE MUECKE: There certainly is. I had a case on it in which I believe some of the members of the organization argued that they could not have access to the place where the employees lived on the land of the employer because it was private property, and I held they could because it had a quasi public use

and there was no appeal on it but that very issue was presented and it was argued on that basis. So I don't see why it doesn't affect that and if it doesn't, then we will let you argue that in the legal briefs. But you are overruled at the moment. Go ahead.

THE WITNESS: Yes. There has been occasions where we have been denied access to the workers during lunch periods.

Q (By Mr. Rutkowski) From your experience in these elections based upon your opinion and your experience, what amount of time has this added to the period required to obtain authorizations for petition?

MR. KYL: Excuse me. Just to be clear. Is this California?

JUDGE MUECKE: It is based upon his experience concerning which we have heard a great deal of testimony.

MR. KYL: Objection on the ground of lack of foundation relating to Arizona. I really just want to know, is he talking about California.

JUDGE MUECKE: Overruled. He has already said the conditions are similar. We have been through this before.

Go ahead.

THE WITNESS: I am sorry. You have to repeat the question.

JUDGE CRAIG: I would like the question, too.

Q (By Mr. Rutkowski) Based upon your experience, where access was denied in these 400 elections do you have an opinion as to how much additional time this added to collect the necessary authorization petitions?

A It does require more time because then you have to talk to the employees one at a time and make the same presentation to each individual employee.

When you have the access you can make a presentation to groups of employees during the lunch period.

Q Again based on this experience do you have an opinion as to how much longer it has required?

MR. KYL: Objection. Hypothetical. Speculative.

JUDGE MUECKE: It probably would be better if you told us why it took more time and then give us an opinion.

THE WITNESS: It took longer because, as I said before, you know, if you go into the field and talk to workers during the lunch period you do two things. You are able to talk to groups of workers together. If you don't, then you have to talk to them individually at their homes so you can make only two or three home visits a night but you can talk to all the workers in one lunch break with the same information. [131]

The other thing is that if you go into the field and the employer is there and the supervisors are there and the Board agents happen to be there, the worker feels that it is a legitimate thing. We are not against the law. We are not trespassing. It is a legitimate thing. So therefore it has a beneficial effect in

terms of argument that the workers are less frightened to participate in the process.

JUDGE MUECKE: In terms of persuasion time, you mean?

THE WITNESS: Yes.

* * *

Q (By Mr. Rutkowski) Mr. Chavez, in regard to the election procedures of the Arizona Act, is there any requirement with that Act, that the election be held at the time of peak harvest?

A In California?

Q In Arizona.

THE WITNESS: Not to my knowledge. From the explanations I know about the law, there is no provision that an election must be held during the peak season.

JUDGE MUECKE: The thing you could do in a matter like this and with any other questions of this type, you could say: I will tell you, Mr. Chavez, that there is no provision in the Arizona law — for whatever it is — or there is a provision; now from your experience does this have an effect, and if so, what is it. Then we would avoid these problems where you get objections and then you would be asking a legal question that could be determined later as to whether it is appropriate or not. Do you follow what I am saying?

MR. RUTKOWSKI: Yes, I do.

JUDGE MUECKE: In other words, you can say to Mr. Chavez: There is no provision in the law for an election or time period or something of that sort; does this have an effect — something like that. I would think that would be the way to do most of this. Then we wouldn't be asking him for his legal opinion.

Q (By Mr. Rutkowski) Mr. Chavez, let me tell you that there is no requirement in the Arizona Act that the election be held at the time of peak harvest. Is that your understanding?

THE WITNESS: Yes. [134]

Q Just before I asked for your opinion regarding that — this is by means of foundation — in your lobbying and negotiating and consultation for legislation in California did the United Farm Workers take any position on whether or not such a provision should be in that legislation?

A Very definitely. Our position was that unless the election was held during the peak of the season that we would have a situation where the minority employed would be determining union representation or lack of that for the majority of the workers, and we argued strongly it should be during the time when the peak of employment is in effect.

* * *

Q (By Mr. Rutkowski) Assuming, Mr. Chavez, the [135]
Ariziona Act does not require election at peak of employment, in your opinion based on your experiences in California, your knowledge of agricultural operations in Arizona, your knowledge of farm workers in [136]
Arizona, what is the result of a law which provides for

elections without providing that they be held at a seasonal peak — peak employment?

JUDGE MUECKE: He has already answered the question — if you are going to object — he said the results is minority employment is voting. He already answered that. You didn't object when he answered it before.

Go on to the next question.

Isn't that correct, Mr. Chavez?

THE WITNESS: Yes, I did answer it.

Q (By Mr. Rutkowski) I will tell you that the Arizona Act has no time limit within which the election must be held after petition has been filed. Does that correspond with your understanding?

A Yes.

Q In your opinion, based on lobbying for legislation in California, the elections held in California, knowledge of farm workers in Arizona, what is the practical effect upon farm workers voting in valid elections if you do not have some time limit within which the election must be held?

Mr. KYL: I object to that on the ground it is purely hypothetical and conjectural, and would refer the Court to the stipulation which shows seasons, I believe, which run all the way from about eleven months down to two weeks.

JUDGE MUECKE: Why don't you take that into account in any question you are going to ask him.

We will take our recess.

(Brief recess.)

Q (By Mr. Rutkowski) Mr. Chavez, you testified this morning the California Act provided a seven-day period within which the election must be held after a petition was filed, is that correct?

A Yes.

Q I will tell you that the Arizona Act has no comparable provision requiring that the election must be held to have been a statutory period after the petition is filed. Do you understand that?

A Yes.

Q In your opinion the elections of California, your knowledge of farm workers, the seasonality of the industry that you testified about, and your experience in the elections that you have been involved in in California, what would be the result of organizing for an election under a Statute which does not have such, either a seven day or some statutory limitation?

Mr. KYL: Excuse me, I believe that was essentially the same question that was asked just before the recess and to which I objected. [138]

JUDGE MUECKE: Yes.

MR. KYL: I restate my objection.

JUDGE MUECKE: What was your objection?

MR. KYL: My objection is that the question is too general. It calls for speculation and conjecture and it is hypothetical.

JUDGE MUECKE: Why is it hypothetical? Is there something in the law that makes it hypothetical?

MR. KYL: There is something in the facts that make it hypothetical. It all depends whether you are talking about an eleven month season or a three or four week season, and all the variables in between.

JUDGE MUECKE: Take that into account if you pursue the issue. Other than that, it is overruled.

Incidentally, on any objections you may have had to relevancy of all this, you have previously made a record on that and the Court does acknowledge that. You don't have to continue making a continuing objection.

Go ahead.

Q (By Mr. Rutkowski) Do you remember the question, Mr. Chavez?

A No. Please restate it.

Q In your opinion, based on your knowledge of the agricultural industry, the seasonality of that industry, [13
what would be the result of a statute which did not have a statutory requirement either for a seven day or some statutory period within which the election had to be held?

MR. KYL: Excuse me, Your Honor. I thought in response to my objection you asked Mr. Rutkowski to make the question more specific.

JUDGE MUECKE: No, I said: develop it further. I assume he will.

Go ahead. Overruled. He will. Go ahead.

A In my opinion and from the experience that I had with California law, it would prevent many workers from voting because many of the crops, many of the practices in Arizona, the same as California, in terms of seasons and crops and so forth, so that if the election is not held quickly after the petition is presented, then it means that the vast majority of workers would not be there to vote, they would be gone.

Q Mr. Chavez, if under the California statute an employee raises a question concerning representation, when is the hearing on that question conducted?

A The hearings on those issues is conducted after the election is held, because the intent or at least what we argued was that: let the workers vote and then let the issue be decided afterwards so at least we have the [140]
ballot, the workers voted, at least they were able when the majority of the workers were there, were able to cast a ballot to decide union representation.

Q I will tell you that the Arizona Act calls for: if an employer raises a question concerning representation that that hearing would be held before the election. Do you understand that?

A Yes.

Q In your opinion, again based on knowledge of the seasonality of the industry, the migrant patterns of farm workers, their seasonal nature of their work, and your experience in California, what is your opinion as to the effect that delaying the election until after this

hearing would have upon the rights of farm workers to participate in these elections?

A Well, it would be very difficult because, as I said before, the hearing would take time. So it means that because of the short season — and the seasons aren't any different than in California here — because the crops are the same and the practices are the same in many cases — a large number of farm workers would not be able to make a determination through a secret ballot whether or not they wanted a union, and a minority of the workers would be making those decisions for the workers, the majority of the workers.

* * *

Q I would like to refer you back to the exhibit that [14
has been marked Plaintiff's Exhibit 1. Have you seen that exhibit before?

A Yes.

Q And do you know how this exhibit —

MR. RUTKOWSKI: Do each of the judges have a copy of that? It is the one that is highlighted in yellow.

Q Do you know how that chart was prepared, Mr. Chavez?

A Yes.

Q How was this prepared?

A I asked that the chart be prepared in this form and highlighted so we could explain to the Court the seasons — the seasonality of the crops.

Q Would you tell us where the information that appears on the chart came from?

A It came from the records that were given to us from the growers through their attorneys and I understand was a stipulation to the facts.

Q So all this data was data taken directly from the [145]
stipulated records that the growers supply, is that right?

A Yes.

Q And what data was placed on the sheets from those charts?

A The data dealing with crops, employers, and weeks of employment, peak harvest and total harvest and dealing with three years: '74, '75 and '76.

Q Could you please tell us what the highlighted areas mean on these charts?

A The highlighted areas means that there is at least fifty per cent or more of the peak employment represented by those highlighted areas in those periods.

JUDGE CRAIG: Does each column represent a week? For example, El Dorado, '74, there were four weeks, two of which were around 495.

THE WITNESS: Yes, Your Honor.

Q Do you know the numbers in the figure were from the end of the pay period for that particular week, is that correct?

A Yes.

MR. RUTKOWSKI: Your Honor, I would like to move that what is marked Plaintiff's Exhibit 1 be admitted into evidence as a compilation, a summary of the harvest season, all the harvest season data that

appeared in the stipulation that was presented this morning.

* * *

Q (By Mr. Rutkowski) Based upon your earlier testimony about the time required to collect authorization cards and the fact that the lack of access under the Arizona Act may add to that time, what is your opinion about the ability of a labor organization to obtain a secret ballot election under the Arizona Act in these seasons? The seasons are on Page 1 of Plaintiff's Exhibit 1. [154]

A Could we obtain an election?

Q Yes.

A No. No, we could not, in most of these cases.

Q For what reasons do you base that opinion?

A Well, based on the employment peaks here, represented in this chart, based on the fact that in almost every single election in California it takes us an average of three to six weeks to just get the cards and then another week to be able to hold the election. If that is not present, we cannot do that in Arizona. It would be difficult in most cases to have elections while the workers are there.

JUDGE CRAIG: How would you cure that, Mr. Chavez? Would you say to El Dorado or Boswell or Bodine. You have got to have a peak harvest for six weeks instead of five or four or whatever? How are you going to cure it?

A The way I would cure it is to change the law so that we would be able to have a period in which they have an election like California. The reason that we have a seven day mandatory period in which to have the election is precisely for that reason. All the arguments come afterwards. [155]

JUDGE CRAIG: If you got to get your signature cards and you have only got two weeks, you are not going to make it, are you.

THE WITNESS: Most likely not. Even with the California law, we wouldn't make it.

JUDGE CRAIG: Thank you.

Q (By Mr. Rutkowski) If I may follow up Judge Craig's question, Mr. Chavez, assuming the same hypothetical but add to the fact that the law would require an election within seven days after you filed a petition, do you have an opinion as to whether or not it would be possible to have a secret ballot election in the same harvest seasons?

A Yes. Many of these are for a four-week and five-week period. We would be able to have an election.

Q I would now like to refer you to Page 2 of Plaintiff's Exhibit 1. Would you please tell us which crops are represented on that page. [156]

A On the second page we have lettuce — fall lettuce, Yuma, Phoenix, Morana.

Q Do the highlighted areas indicate the period of peak harvest, again?

A Yes.

Q I would like to ask you the same question —

JUDGE MUECKE (Interposing) Again you are meaning peak employment. Isn't that what you are talking about again?

MR. RUTKOWSKI: Yes, Your Honor.

JUDGE MUECKE: Why don't you use that phrase? I really would appreciate it if you would, since that is the phrase the witness used and has defined.

Q (By Mr. Rutkowski) Based upon your earlier testimony about the time required to gather authorization cards, and based upon your testimony of the time required to gather authorization cards, and the possibility of additional time, because of unfair labor practices by employers, do you have an opinion regarding whether or not labor organizations could petition for a secret ballot election within their seasons listed on Page 2 of this exhibit?

A In Arizona? With the Arizona law?

Q Yes.

A In my experience it would be difficult to qualify to get the majority of the workers to vote in elections because of the season — because of the employment peak.

JUDGE CRAIG: If you had that kind of a season in California you would have the same difficulty, wouldn't you?

If it takes you three to six weeks in California to get your election in order you are not going to be able to make it in two weeks on Wood; you are not going to be able to make it in Yuma. In Phoenix you might be able to make it, to have made it in 1975 but you

wouldn't make it — well a possibility in '76 if you cut it to four. But you wouldn't make it on Norton in '75 or '76, even under California law.

THE WITNESS: That is right. It would be very difficult. We have a number of employees in California that can't make it under the law. It would be very difficult.

JUDGE MUECKE: Actually your testimony — without having to go on each page — your testimony would be that if you could hold an election in three weeks that obviously you could do it any place where it would show a three week period. If it went longer than that — if it just showed a three week period, you wouldn't be able to do it but given the seven day law or something of that kind — which would put a limit on it — on that basis, whether it would be possible for you to hold an election — doesn't that apply to each and every one of these papers? [158]

THE WITNESS: Yes, it does.

JUDGE MUECKE: The same testimony given to Page 1 would apply to all the rest of the pages in this exhibit, would it not?

THE WITNESS: Yes, it would.

JUDGE MUECKE: I think we understand the point. I don't think you have to apply it to each of the pages unless there is something different. I am just trying to save you time.

Q (By Mr. Rutkowski) If I might ask one hypothetical, it would apply to each of the four pages, Mr. Chavez. That is, I would like you to assume that the time necessary that you testified earlier to select au-

thorization cards would be three to six weeks. All right?

A Yes.

Q And then I would like you to assume hypothetically that from the point the petitions were filed to the time the elections were actually held would be an additional five to seven weeks.

Given those two stages do you have an opinion as to whether or not it would be possible — under the Arizona Act — to have organized for secret ballot election among farm workers during any of these peak employment seasons.

JUDGE KILKENNY: Counsel, I don't believe I understand your question.

JUDGE MUECKE: I don't know where the five to seven came from.

MR. RUTKOWSKI: Just in regard to this question only, Your Honor, I am laying foundation for testimony that will come later in the trial.

JUDGE MUECKE: All right. Tie it in. In other words, you are saying that given the difficulties caused by Arizona law, you are adding at least two weeks more. In other words instead of being three to six you are saying five to seven.

MR. RUTKOWSKI: That is it, Your Honor. Five to seven in addition to the three to six.

JUDGE MUECKE: You are adding five to seven to the three to six?

JUDGE CRAIG: As I understand you, counsel, what you are saying is that it is going to take him three to six weeks to get organized. After he gets organized and files the petition, assuming a wholly [160] hypothetical period of time of five to seven weeks before an election. Then you say assuming that hypothetical would he be able to get a majority of his workers in an election. He says no; right?

MR. RUTKOWSKI: Yes, Your Honor.

JUDGE CRAIG: Okay.

JUDGE MUECKE: You are going to tie that in later to five to seven weeks.

MR. RUTKOWSKI: Yes.

JUDGE MUECKE: All right.

Q (By Mr. Rutkowski) Mr. Chavez, I would like to refer you to the fourth page of Plaintiff's Exhibit 1, the bottom of the page where it says "Green onions."

JUDGE CRAIG: What page? Four?

MR. RUTKOWSKI: The last page, Your Honor.

Q (By Mr. Rutkowski) Have you looked at the figures for the green onions, Mr. Chavez?

A I have, yes.

Q In relation to your earlier testimony about the time required to gather authorization cards for various crops, would your testimony vary at all in regard to specifically the green onion harvest?

A If there are 39 weeks of peak employment, no.

Q Are there any particular difficulties in gathering thirty per cent or even fifty per cent authorization cards in this industry?

A In the green onion industry, as you may know, it is what we call — it is a day haul type of industry. That is that people work there and they are paid in most instances — there may be a few not but in most instances my experience both in Arizona and California, they are paid every single day in cash money, so that that is an industry where there is a tremendous amount of turnover. I don't know — if the turnover were not that significant we would be able to have elections but if the turnover is such that if we do not establish a majority because of the constant turnover then we would not be able to win an election.

Q Does the person who participates in the work force in green onions vary in any fashion from the work force in other crops?

A Yes.

Q In addition to what you have already testified?

A Yes. The green onion harvest employs a large number of minors, both in California and Arizona, and particularly in Arizona. So that there again we have to exclude anybody under sixteen years of age in terms of voting because, as I am told, the law would not permit them to vote. So that would be another factor to consider.

* * *

Q Now finally I would like to refer you to the part of the Plaintiff's exhibit which is marked "Citrus" which shows a harvest season of respectively forty-nine and forty-five weeks. In regard to the practical problems of meeting the thirty per cent authorization requirement of the Act are there any particular problems related to the citrus industry?

A We have a problem in California that is similar to the one we would have in Arizona, because the industry structure is pretty much the same. That is, first we would have to determine who the employer is. You have the Arizona Citrus Growers, I understand is an association that represents forty or so growers. The forty-nine weeks represents harvest activity or peak employment activity in those forty or so members, and we are unclear of this but if the Board or the law ruled that each and every citrus employer is a separate employer we would have to have elections with that employer, we would never qualify even though it is forty-nine and forty-five weeks.

On the other hand, if it is ruled that the Association is in fact the employer, we would probably qualify. If it is ruled that the labor contractor which brings people into the Association — this is the majority of the cases — there may be some exceptions, then it may be difficult to qualify. [163]

MR. RUTKOWSKI: Thank you.

JUDGE KILKENNY: Wouldn't that be true in California, too?

THE WITNESS: Yes, it is very true in California.

JUDGE KILKENNY: Well then, what is there in this legislation that might be cured — let's put it that way. Suppose the legislature says, I will give you everything you want with the citrus growers. What could you propose?

THE WITNESS: I would propose that the Association would be the employer. The Association represents twenty, thirty, forty, a hundred employers that are in many cases small employers and because of

what is known as a pro-rate system, that the employer has a quota that they can sell, they can't sell all the fruit at the same time so that the picking then — it is alternated between all of these employers and if the Association is the employer then the thirty-nine weeks, the forty-nine weeks would make sense and we could qualify. But if the ruling would be that each and every individual citrus employer would be separate that they work — the experience in Arizona and in California — that they work two or three days in one ranch, a week at the very most, there are exceptions where one ranch may be a very large plot of land so they may work more there. But the majority of the ranches in citrus, both California and Arizona, are made up of small employers. The average I believe is something like twenty, thirty acres.

JUDGE KILKENNY: Well, in other words what you are saying is that what should be done, what the legislature should do would be to force the little growers to act under one head.

THE WITNESS: They are already that way. The Association —

JUDGE KILKENNY: If they are, then why don't you look — if in fact they are, why can't you look to the Association?

THE WITNESS: I would say that this would be — if that is the case then we could hold elections.

JUDGE KILKENNY: No, not that we look to it; why don't you look to it? You say this is the fact.

THE WITNESS: I am told by our legal department that that question is pretty much unresolved and it hasn't — it is very unclear.

Q (By Mr. Rutkowski) Mr. Chavez, those are the only questions I had in regard to the exhibit. [166]

I would like to present to you another hypothetical. That is: some persons have suggested that the problems that you have raised this afternoon could be cured by asking workers to remain in the area until the election were held were it scheduled after the harvest season.

The question I would like to pose to you: assuming that situation where the Union went in and organized during the harvest season petition for an election. For whatever reason by the time the Board scheduled the election it was scheduled for a time after all the work had ceased for that particular employer. Given that set of facts, do you have an opinion as to whether or not it would be possible to have a secret ballot election wherein the majority of agricultural employees that work on that ranch could participate?

A Yes. My opinion is — comes out of experience, where we can do well within one or two days after the employment ends. They will wait around for that long. But by the third day you begin to lose some of them.

By the fourth and fifth day most of them are gone. It is a very difficult problem. They will wait one or two days. [167]

We have experienced that in California because we have had some elections that are scheduled in seven days, but if the peak employment or the job terminates at, say, the fifth day, the election has to be held on the seventh or eighth.

If the job terminates maybe on the fourth day and the election is held on the seventh day, we run into problems.

Q Is it your testimony that in your experience in California, even with the seven day provision, some harvest seasons have ended before the seventh day arrived?

A Yes. There are some cases.

Q It has also been suggested by some persons, Mr. Chavez, that another way to remedy this problem would be to schedule that election for the next peak season. Do you understand what that means?

A Yes.

Q Assuming a situation where under the Arizona Act agricultural employees petition for an election and for whatever reason again at a time the Board scheduled the election the harvesting ended, would it in your opinion be a satisfactory remedy to schedule that election for the next peak harvest time?

A I don't think so because you would not be — in many instances the work force changes. It would be almost impossible to have the same workers return to the same grower.

Also, we would run into problems of exposing the workers to the problems of — those that were identified with the Union being identified with the Union and getting a job back the second time as we have found in some instances in California who do not have an election right away that they have a difficult time getting jobs back once they are identified as being pro-union.

Q Mr. Chavez, do you have any information always regarding whether or not there are agricultural employees regularly working in fields who are under the age of sixteen years old?

A There are, yes.

Q And from where do you get this information?

A Well, from various sources. One, our own personal observations; from our staff; from workers themselves; from our service centers where sometimes workers under age sixteen will come in for a particular service, and most recently from an article that was published in the Tucson Daily Star, I believe was the name of the paper, wherein one or two growers admit [169]
there are minors working, expecially in the green onion fields. And from a study made by the Department of Agriculture that was just released this couple of weeks ago for 1975 where the study revealed that thirty-two per cent of the work force, agricultural or farm labor work force in the United States, according to the article thirty-two per cent are younger — are between the ages of seventeen — and I believe younger than age 17 - 17 and younger. Thirty-two per cent; almost a third.

* * *

Q (By Mr. Rutkowski) Mr. Chavez, I will tell you [170]
that the Arizona Act does not permit agricultural employees under the age of sixteen to participate in secret ballot elections. Do you understand that?

A Yes.

Q Based upon the information you just told us, do you have an opinion as to what the effect of that provision — that provision would be upon the rights of some agricultural employees to participate in representation elections?

JUDGE MUECKE: I suppose your answer to that would either be yes or no, that you have an opinion or don't have an opinion.

THE WITNESS: I do have an opinion.

Q (By Mr. Rutkowski) What is your opinion?

A That there are workers, those workers under the age of sixteen that would not be able to vote.

JUDGE MUECKE: What do you base that upon?

THE WITNESS: On personal observation, reports from our staff, involvement with the work force that survey by the Department of Agriculture.

Q (By Mr. Rutkowski) When you say reports from your staff, are you saying — have there been reports from the staff in Arizona as to employment of persons under sixteen years old in Arizona agriculture?

A Yes.

Q And from your experience in California has the experience been the same in that State?

A Yes.

Q From your knowledge of — let's assume that the study by the Department of Agriculture is correct, in your opinion is there any reason, based upon your knowledge of agricultural employees in Arizona and California, to believe that the percentages of persons

within that age bracket would vary substantially from the figures you gave?

A Our observation is that it really goes by crops. There are certain crops that are prone to using minors and there are others that aren't. Green onions is one of those crops that will use minors.

Q Based upon your experience in organizing, do you have an opinion as to whether or not persons who are sixteen years old or younger should be permitted to vote in these elections? [172]

MR. KYL: Excuse me, Your Honor. If that falls within my continuing objection I just want to have it noted. I think that is strictly hypothetical and conjectural and irrelevant.

JUDGE MUECKE: Well, he may have a reason based on his past experience and perhaps he can amplify that.

Do you have an opinion whether they should vote or not? You can answer that yes or no.

THE WITNESS: Yes, I do.

JUDGE MUECKE: What is the reason or basis for such an opinion?

THE WITNESS: The basis of the opinion is that in some crops both in California and Arizona the minors constitute a very sizeable percentage of the work force. In some cases those minors are full fledged farm workers, meaning that they are working in the fields day in and day out, and as it relates to some of those crops where minors are used, excluding those

workers from voting would deprive a worker from determining representation, from participating in the process for representation.

JUDGE KILKENNY: What do you mean by sizeable?

THE WITNESS: Your Honor, if you take in California the rasin-grape industry, I would say that without fear of being too far off I would say that eighty per cent of the rasin-grape is harvested in California by children sixteen and under — strawberries, green onions they use a lot. I don't know the percentage in Arizona but we do know for many years that minors, children are used in the work in the fields.

* * *

Q I am telling you that under the Arizona Act for an agricultural employee to be eligible to vote in a representation election at a specific ranch, for a specific agricultural employer, he had to work for that same agricultural employer during the preceding calendar year. That is January 1 to December 31 of the preceding year. Do you understand that statement?

A Yes.

Q Assuming that that were in fact the case, do you have an opinion based on your knowledge of the agricultural employees seasonally related to their work, whether or not that would result in preventing some employees from participating in secret ballot elections?

A It would prevent some from voting, yes.

Q For what reason?

A A certain percentage of workers do not return to the same grower year in and year out, and new workers come to work every year. This is a pattern in agriculture. This happens. [176]

JUDGE MUECKE: Did you say thirty per cent?

THE WITNESS: No. Just a certain percentage. I don't know what the percentage is.

Q (By Mr. Rutkowski) Mr. Chavez, this would be my final question in regard to the election provisions and that is: you testified earlier that normally in an election campaign you attempt to obtain eighty per cent authorization cards before you file, is that correct?

A Yes.

Q Could you please tell — I am not sure if the record is clear — as to what is the purpose for obtaining that percentage rather than what is minimally required by whatever statute is applicable.

A Well, our experience has shown not every one who signs a card will vote for the Union.

Also, in that two or three or four week period from the time we get the first card until the time we have the election some workers will move out, will no longer be there, so it is expensive and time consuming to be engaged in elections. You can't win because whether you win or lose the election there is almost always litigation that follows which is more expensive so there is also a commitment made by the workers, the workers will be committed because they become identified with the Union. Our experience has been that in some cases the employer will take action

against those workers and they will suffer some consequences.

So to prevent all this, problems that come after the election if we lose the election, we try to be reasonably sure we are going to win an election and the record shows that we won the majority of elections that we engage in.

Q I will tell you, Mr. Chavez, under the Arizona Statute, the exclusive procedure by which the Agricultural Labor Relations Board can order an employer to negotiate with the Union is if that Union has been certified by winning a secret ballot election. Do you understand me?

A Yes.

MR. KYL: Excuse me, Jim, before you ask another question.

Your Honor, this is another matter that we have a differing legal interpretation on. I think we can make the same objection and the same ruling would be appropriate.

JUDGE MUECKE: Yes, and it is in your pretrial and your objection is set forth there. The record may show a continuing objection as set forth in the pre-trial order to that issue.

Q In terms of some foundation, in your experience in over four hundred elections that you have held in California in the last year and a half, your knowledge of these elections and as you indicated earlier, some instances of employer unfair labor practices, have you occasionally situations where the union thought it necessary to petition the Board that an employer be

ordered to bargain without — after the Union had lost the secret ballot election?

A I believe that we have a few of those petitions before the Board now.

Q Under what circumstances has the Union found it necessary to petition for such bargaining orders?

A When the conduct of the employer in our opinion has been such that it has prevented the workers from voting because of intimidations, because of false promises, because of captive audience meetings.

When the atmosphere in the election is not conducive to a free choice, when there is intimidation, fear, firings and so forth, we have gone to the Board and we have petitioned that even though we lost the election, that the Board should order the employer to bargain with the Union. But also we had a substantial number of cards signed, going into the election.

Q What in your opinion, based on these experiences, have you found it necessary to petition for such an election, would be the result if we had a law which did not provide or enable the administering board to order an employer to bargain, absent the Union winning the secret ballot election? [179]

A Well, it would be a merrygoround. We would then have to wait until the next year to have another election. It would not really effectively deal with the problem of interference with the rights of workers to vote without being subjected to pressures from the employer.

We find in California that in some cases this has been the remedy that we sought.

Q Assuming again a situation where the Board is not empowered to order bargaining outside the secret ballot election, and an employer so continues to make these unfair labor practices that the secret ballot election process itself never operates fairly, do you have an opinion as to the effect that would have on the ability of a union to be certified at that particular ranch?

A I don't see how the union could win an election under those circumstances and it would be extremely difficult. It means we would be holding elections every year to come back to the same problem.

Q I would like to draw your attention to Exhibit 2, [180]
a copy of the Act, Section 1384, Page 5. Are you familiar with that section, Mr. Chavez?

A I had this section interpreted to me by our attorneys and I read the section.

Q I would also like to refer your attention to 1385-D, Page 11, Lines 2 through 8. Would you please read that.

I am sorry. Excuse me ... You should start, I guess, on Page 10, the very last sentence, Line 31.

JUDGE CRAIG: I am missing Page 11.

(Discussion off the record)

JUDGE MUECKE: Go ahead.

Q By Mr. Rutkowski) Have you had a chance to read those?

A Yes, I have.

Q Mr. Chavez, you testified earlier that you participated in at least over a hundred collective bargaining sessions in regard to the American Farm Workers Union, is that correct?

A Yes.

Q Do you have an opinion as to the practical effect - excuse me, strike that.

Based upon your reading of this section and your consultation with your attorneys, what do you [181]
understand these two provisions to mean in terms of practical effect on negotiating a collective bargaining agreement?

A That there are certain issues that are considered to be by the law management rights and that the Union cannot enter into negotiations in those particular items with the employer.

Q If in fact these provisions and the other provisions of the Act that may apply mean that an agricultural employer need not negotiate about these provisions, do you have an opinion as to the practical effect, the exclusion of these topics from the collective bargaining procedures would have upon attempts of farm workers to organize a union?

A I do, yes.

Q And what is that opinion?

MR. KYLE: Just for the record, the same objection: the differing legal interpretations.

JUDGE MUECKE: Right.

A There is a section there that classifies — to sell or lease any of the real or personal property involved therein. We don't know if this means that we cannot — we will not be able to negotiate a successor's clause. Our legal department tells us that we may not do that. There is a section that deals with it. Line 6: "—to de- [182]
termine the methods, equipment and facilities to be used in producing agricultural products. . . ."

If by that is meant that we could not enter into negotiations regarding mechanization and displacement of workers because of technology, then it would be very detrimental to the Union. I don't know what it means but if it means what I think it to mean, then it would have a very bad effect on the Union.

Q Referring you to Page 5, Line 21.

A Line 21?

Q Yes.

A Line 21?

Q Subsection 2 there.

A Subsection 2.

Q "To hire, suspend, discharge or transfer employees in accordance with his judgment of their ability".

A I have an opinion.

Q Do you have an opinion?

A Yes, I do.

Q (Continuing) — as to the result, if in fact the law excludes these topics from the collective bargaining process or makes them contingent upon the employer

consenting to bargaining to them, what practical effect [183]
that would have upon negotiating, forming a union for farm workers.

A I don't know the legal interpretations, but if it means that the employer has the sole right in questions of hiring, then it may mean that we are not able to negotiate a hiring hall. It may mean that we don't have the right to negotiate a seniority clause. If it means to suspend or discharge or transfer workers — if that means that we cannot grieve on these matters, then the union would be no more than a referral agency, an employment agency.

The right to grieve is fundamental in a labor agreement — the right to grieve when the employee feels that he was dealt with unjustly. And if the interpretation is that we cannot grieve on suspensions and discharges, then it would be very detrimental to the Union and to the workers.

Q Mr. Chavez, when you as President of United Farm Workers of America participated in drafting and lobbying for legislation when you read Section 2, do you have any difficulty in understanding the intent of the words that are set forth there?

A I am very clear that to hire, suspend, discharge or transfer employees is part of the management rights, the rights of employers under this Act, and it is to be done with the judgment of the employers on the ability of the workers.

Q As a person, as a layman with significant background in labor organization, do those words on their face have meaning to you that relates to specific operations and practices that do take place in the field that you would negotiate about? [184]

A If this language was part of the contract that we were negotiating, that means that we have very little to say about management rights in terms of negotiations.

* * *

DIRECT EXAMINATION (Contd.)

BY MR. RUTKOWSKI) Mr. Chavez, when we left off yesterday afternoon I believe we were talking about management rights section. If I may refer you again to Page 5 of the Arizona Act, particularly Lines 21 and 22, would you read those, please. [1

A I have.

Q I ask you, you told us that you negotiated some one hundred collective bargaining agreements in 1970, '71, is that correct?

A That is correct.

Q Have you participated in collective bargaining sessions since that time?

A I have, yes.

Q On a fairly regular basis?

A I do participate. Not as regularly as I did before.

Q In all these previous bargaining sessions that you participated in, have you negotiated provisions in collective bargaining sessions, or attempted to, regarding topics listed in Section 2? [186]

A Yes, we have.

Q I am telling you that under the Arizona Act it is discretionary with the employer as to whether or not he wishes to negotiate about all the topics listed in 1 through 5 in that section. Do you understand that?

A Yes.

Q Including those listed in Section 2. Do you understand that?

A Yes.

Q Based upon your experience in collective bargaining, do you have an opinion as to what would be the effect upon the Union's ability to participate in collective bargaining as to negotiate collective bargaining contracts if you could not, because the employer refused to do so, negotiate about the topics listed in sub-paragraph 2?

A I need a clarification. Would refusal be due to the law or refusal because he just doesn't want to negotiate.

If in California they refuse then we can strike, we can boycott, we can bring an action to bring that about.

Q Okay. Let me give you another factor and I will [187]
tell you then that under the Arizona Act if you threaten the employer with a strike because he refused to negotiate about one of these acts it would be an unfair labor practice. Do you understand that?

A Yes.

Q Given that circumstance, where the employer was refusing to negotiate because of the law, because he claimed it was illegal, in your opinion what would be the effect upon the collective bargaining process if you could not — would you strike that, please.

Let's put it this way. I want you to assume the fact that it is illegal under the Arizona Act to coerce an employer — an employee to coerce with threat of a strike an employer to negotiate about these topics. Do you understand?

A Yes.

Q Now I want you to assume a situation where an employer under those circumstances, because of the Act, refuses to negotiate about the topics in subparagraph 2. Do you understand that?

A Yes.

Q In those circumstances, based upon your experi- [1
ence, what would be the effect upon the Union's ability in the collective bargaining sessions to negotiate a collective bargaining contract for agricultural employees?

A Well, I would say it would be detrimental to the workers and to the Union. I don't see how we could properly represent workers if we could not grieve about, for instance, their discharge. I don't think that

the Union could get very far. I don't think that the workers would be encouraged to join the Union or even if they did, encouraged to participate and be part of it. And I don't know that our own Union would engage in collective bargaining.

If we could not do something about workers' discharges I think that I, for one, personally would most likely not sign a contract if I could not get the right of workers to grieve in cases of discharge.

* * *

Q (By Mr. Rutkowski) Mr. Chavez, in the collective [189]
bargaining process when these topics do come up in the context of those sessions, in what context are they raised or in what form would they appear in the collective bargaining agreement, referring specifically to matters regarding —

JUDGE KILKENNY: Suspension and discharge, you mean?

MR. RUTKOWSKI: Suspension and discharge of employees, yes, Your Honor.

A Under what section of the contract?

Q Yes, in what fashion would they be dealt with in a collective bargaining agreement?

A I don't understand your question.

Q When —

JUDGE MUECKE (Interposing) In what way is it a subject for negotiation? What do you negotiate about with respect to that paragraph?

A I see. Well, we negotiate about discharge, that [19
the employer has the right to discharge someone but we have the right to grieve about this — about that discharge.

On the question of suspension it is the same thing. The question of transfer. We want to grieve because that may interfere with our agreement if there is an agreement, for instance, on job classifications and pay for those — wages rates for those classifications.

JUDGE KILKENNY: By that do you mean that you have a right under your procedure, the procedure you would like to follow, to place this grievance before a grievance committee and if the grievance committee went a certain way, why then you could have a further step that you might take if the employee were not reinstated?

THE WITNESS: Correct. The arbitration procedure, that would be final and binding. But we would be able to negotiate about these items in the formation of the contract.

Q (By Mr. Rutkowski) A final question on this point, Mr. Chavez. Based upon your experience again in collective bargaining, if in the collective bargaining process you could not negotiate about these topics or about grievance procedures relating to these topics, do you have an opinion about the ultimate effect upon the ability of farm workers to organize a union under these restrictions?

A It would be very difficult to demonstrate to the [191]
workers the use and the need of a union. We couldn't do anything about a worker being discharged. We couldn't even grieve about it.

I have grave doubts that the workers would be interested in a union.

* * *

Q (By Mr. Rutkowski) Mr. Chavez, in relation to [194]
your last statement are you familiar—have you experienced any situations where an employee was discharged and the reason given was he was unable to do a job when there were perhaps other reasons for that discharge?

A Yes. We found both situations when in fact the worker was not able and there is not much of a case there. But we have also found that in cases where—by just prior work experience, he was being discharged for being unable to do the job, when in fact it was something else, yes.

Q And what were the other reasons for which he was actually being discharged in those experiences you have had?

A In many cases it comes back to the foreman and the worker not getting along for other reasons other than the work. In some cases, misunderstandings in orders given for a particular job to be performed.

Q All right, thank you. Are you familiar with what [195]
are commonly called, I believe, stitching and hauling functions in the agricultural industry?

A Yes.

Q And are you also familiar with the process of those workers who pack inside packing sheds in the agricultural industry?

A Yes.

Q I would like to direct your attention to Page 3 of Paragraph 6 of the pre-trial order which is a stipulation entered into by the parties describing these functions. Would you please read that stipulation.

JUDGE CRAIG: What page?

MR. RUTKOWSKI: Page 3, Paragraph 6 of the pre-trial order, Your Honor.

A I have it.

Q Mr. Chavez, in your experience in agriculture have you had occasion to observe these functions being carried out by agricultural employees?

A Yes, I have.

Q Also, in your experience in agricultural and organizing have you had occasion to observe any strikes or work stoppages by employees engaged in any of these functions?

A Yes.

Q Could you please tell us what experiences you have observed of work stoppages by these groups?

A I have seen—observed a situation in Salinas where the truckers and the stitchers at the Inter Harvest Company in late 1970 refused to work because that company had recognized our Union after a card check and were engaging in negotiations with us and the truckers and the stitchers refused to work, refused to move their trucks even though they were under con-

tract to another Union, and then also strike in Salinas Valley by the truckers and the stitchers, I believe two or three years ago.

Q In these two situations that you observed, Let's take the first one, this was the Inter Harvest Company in 1970?

A Yes.

Q What was the result of the work stoppage by the haulers and stitchers upon the harvest activity at the ranch at that time?

A Well, everything stopped. Everything came to a standstill. No trucks and no stitchers. Nobody was working.

Q For how long did this situation continue? [197]

A A few days. I believe about a week or so.

Q And in the second situation how long did that continue?

A In the strike situation?

Q Yes.

A I don't recall the exact time but it was around probably three weeks or so.

Q And during this period were the agricultural employees who worked in harvesting the crops, were they able to work?

A No, they were not.

Q Why was that?

A Well, the truck drivers and the stitchers were on strike and that pretty much ended the harvest because you can't move—if you can't move the produce, no sense harvesting.

Q Based upon these experiences you had as well as your knowledge of these functions and their relation to other functions of agricultural employees, do you have an opinion as to the effect of a strike by the stitchers and haulers upon the harvesting, production and shipping of agricultural products?

* * *

Q All right. Based upon your observation of the work stoppage or these two work stoppages by stitchers and haulers, your knowledge of their function in general and how they relate to other operations in the agricultural industry, do you have an opinion as to the effect of the work stoppage, strike by stitchers and haulers, upon the harvesting production and shipping of agricultural produce?

A They have been very successful in terms of stopping the production.

Q Have you observed—are you familiar with operations that take place in packing sheds in some industries in agriculture?

A Yes.

Q If I may, just very briefly, present—well, could you—let me give you this hypothetical: Assume that there is—let me ask you:

Is melons one of the crops that are packed in packing sheds?

A Yes.

Q By melons, I am referring now to cantaloupe.

A Yes, cantaloupe.

Q Assume there is a cantaloupe or melon grower who packs his own—his melons in his own packing shed, and assume a second pack and that is that the only melons he is packing are from his own fields, he is packing melons for no other agricultural employer.

Given those circumstances do you have an opinion as to the effect of a strike by the workers in that packing shed upon the entire process of growing, harvesting, and shipping those agricultural products, those melons?

A Well, it would have a very detrimental effect on the packing and shipping of the melons because if they are not packed they can't be transported, they can't be moved. [200]

Q In the same situation do you have an opinion as to how a strike by the persons in that melon packing shed would affect the harvest, compared to a strike by the employees in the field who were actually picking the melons?

A If the melons are not packed they will not be picked. There would be no sense of picking them if they can't be prepared for shipping.

Q So is your answer that the effect of the work stoppage by either group would be essentially the same?

A Yes. We have seen throughout our history in agriculture, that when packing sheds are striking, all those people who work in the fields many times are idle.

* * *

Q (By Mr. Rutkowski) Mr. Chavez, based upon [203] your personal visit to Arizona during this time, the contact you had through the offices that the Unions maintain in Arizona, could you tell us what damages farm workers in the State of Arizona and the United Farm Workers Union have suffered as a result of the passage of this Act?

A That the workers in terms of wages and fringe benefits and morale to build their Union have been hampered by the passage of the law.

In terms of the Union, our Union has been dam- [20
aged seriously in its efforts to boycott products in the State of Arizona. We have had a number of restraining orders. The Board has issued complaints against the Union. It has cost us money, attorneys' time.

JUDGE KILKENNY: What type of restraining orders, Mr. Chavez?

THE WITNESS: In relation to the right — in relation to our boycott activities, to leafletting, to talking to consumers about boycotting the product, an order against us preventing us — a TRO preventing us from engaging in conversation with the store management asking them to honor the boycott.

JUDGE MUECKE: Can I ask a question. Are all these matters covered by what is attached to the pre-trial order? The answer to the question you just posed?

MR. RUTKOWSKI: Yes, Your Honor.

JUDGE MUECKE: The Board actions?

MR. RUTKOWSKI: Yes, all the Board actions.

JUDGE MUECKE: That includes all of them, doesn't it?

MR. RUTKOWSKI: Yes, Your Honor.

JUDGE MUECKE: That is what I thought. So your references, presumably the reference of Mr. Chavez would be covered by the attachments to the pre-trial order.

MR. RUTKOWSKI: In so far as they relate to [205] the lawsuits and complaints filed against the Board, yes, by the Union.

Q (By Mr. Rutkowski) Mr. Chavez, you mentioned in regard to the Union's activity, that there has been an injury to the Union's ability to boycott. Could you tell us in what respect the law has impeded that activity?

A Well, very significantly in our right to leaflet, to distribute leaflets to customers as they approach the stores, in what we consider our right to speak with customers as they approach the retail establishments, in preventing us from communicating to those customers our campaign to boycott the products.

Q Has there been any effect upon participation in the boycott by persons in Arizona as a result of passage of the Act?

A Well, there were some arrests. There were some — not arrests but some restraining orders issued or RTO's issued against the Union. It did have an effect, a direct effect on our supporters and our volunteers. We found them less willing to come out and boycott because of the uncertainty of the right to do it under the — or the harrassment they were receiving under the law.

Q You mentioned in relation to farm workers — I [20
believe you mentioned wages of farm workers in Arizona have suffered since passage of the Act. On what fact do you base this statement?

A Just the differences between what they were before the law and as compared to California where we now have a law, and what they are now. The differences are growing every day more and more.

Q You also mentioned, I believe, that you felt that benefits of farm workers, fringe benefits, had suffered as a result of passage of the Act. Would you tell us in what fashion, on what facts you base that statement.

A We have not been able to organize any workers in Arizona. Not doing that, we have not been able to provide for them the benefits that we have been able to provide for those that we have organized in California.

Q I believe another fact you mentioned, I think you said loss of morale of workers in organizing a union. Could you tell us what you meant by that.

A What I meant by that is that there was wide publicity given to this law at the time that it was signed by the Governor. Even the time when it was being debated in the State Legislature. And then since [207]
then, because the Union involved in a campaign for a recall of the Governor who signed the law and so that in the course of all that publicity the workers came to understand what we were up against and our experience has been that we found many of the workers dropping off and telling our staff and telling me directly in some instances that they didn't see how they could organize a union with the law — with the present law hanging on their necks.

Q Has this law had any effect upon union membership in the State of Arizona since its passage?

A It has had, yes.

Q And in what way?

A My opinion is that when the law was passed we had around six contracts in Arizona. We lost all the contracts except one.

We feel that while the California growers brought in the Teamsters to get rid of our Union, here after the law was passed in Arizona the employers went non-union with the exception of one, we found that the employers then in 1973 were not interested in negotiating — the same employers that had negotiated with us in 1970. Our feeling is that they felt secure, that

very little could be done by our union because of the present law and therefore we lost the contracts and the membership. [208]

Q Mr. Chavez, one final question I would like. Based upon everything you told us in your testimony yesterday, particularly your knowledge, experience in organizing the farm workers in Arizona and elsewhere, and the knowledge of practical applications of portions of this Act, particularly in regard to secret ballot elections and I believe you mentioned boycott provisions — do you have an opinion again based upon your experience in organizing a union of farm workers, as to whether or not under this Act it would be possible to organize a union of farm workers in the State of Arizona?

A It is my opinion that it would be extremely difficult if not impossible to organize and maintain a union with the present law in California, as I understand it.

Q I am sorry. You said California.

A I am sorry. In Arizona.

* * *

Q Mr. Chavez, you told the Court yesterday that you had had no experience working under the Arizona agricultural law, is that not correct? [20

A Organizing?

Q Yes.

A Yes.

Q The United Farm Workers Union has never tried to organize for an election under the Arizona law, isn't that right?

A That is correct.

Q You never filed an election petition in the four and a half years of its operation?

A We have not, no.

Q You have, I believe, stated on at least two occasions that the Union in fact has no intention of ever seeking recognition under the Arizona Act? [210]

A That is right.

Q So when you testified yesterday about what you thought would happen if you tried to organize in Arizona, the problems that you thought would occur, you were not basing your testimony then upon actual use of the Act in Arizona, were you?

A I was not, no.

* * *

Q (By Mr. Kyl) Furthermore, with regard to the organizing problems and the problems relating to the holding of elections, your answers to the questions yesterday were not based upon any interpretations of the law by either the board or by the Court, but rather the interpretations which Mr. Rutkowski supplied to you in the questions, isn't that correct? [211]

A Yes.

* * *

Q Excuse me. Let me ask you this question. Do you [221]
know where most of the people live who work in the grape harvest in Maricopa County?

A I don't know.

Q You do not know?

A I don't think I know.

Q Okay. And do you know where most of the people who work in row crops and lettuce and melons? In Maricopa County?

A In lettuce, you are speaking of the harvesting of lettuce?

Q I am.

A Most of the crews come from California and [222]
most of the crews would tend to live in Mexicali, San Luis.

Q These are the lettuce cutters?

A The lettuce cutters, particularly the ground crews.

Q That is pretty common in lettuce generally, isn't it?

A I would say so. They come from San Luis, Sonora, from Mexicali, Baja, California, and I think in some instances they come across the border from Douglas, whatever the name of the Mexican towns are there.

Q There are a lot of crews who are also people living in the United States, are there not?

A I wouldn't say so, no. Not a lot of crews. Most of the crews live on the other side in Mexico.

Q Well, are you familiar with the crews that pick here in Maricopa County, Arizona, where they come from?

A Our experience in the research we have done from many of the companies that harvest lettuce, both in California and in Arizona, that would be the case, that they come from Mexico.

Q As to the ones who just harvest here, you don't know? [223]

A There is very few that just harvest here, and I wouldn't know but I know that the ones that harvest just in Yuma, as an example, their workers I would say almost a hundred per cent come from across the border.

Q I was speaking of Maricopa County.

A I don't know.

Q And you wouldn't know as to other row crops and melons where those workers come from, would you?

A I think in melons it would be pretty much like lettuce, but not in the same percentages. I would tend to think — and as I remember from my experiences, because as you know, we had tried to organize melons for a number of years — that many of the crews also came from the Imperial Valley and most of those workers, of course, live in Mexicali and San Luis.

Q I am speaking of Maricopa County Harvest here.

A Yes, they travel here also to engage in melon picking.

Q Do you remember when I took your deposition on September 16, 1975?

A Yes.

Q Do you remember — this is on Page 49 — do you remember that I asked you this question and you [22
gave the following response:

"Q Do you know where most of the people live who work in the row crops and lettuce? Include lettuce and melons and everything except vines and citrus in Maricopa County."

There is an objection by Mr. Rutkowski and then your answer was:

"A No, I don't."

Do you recall that?

A Yes.

Q Do you recall the answer?

A I think I do, yes.

Q And then you recall this question:

"Q Specifically you don't know whether they would live in Phoenix or in Glendale or in Tolleson or in some other part of the State or in a different State?"

Your answer was:

"A Right".

Do you recall that?

A Yes.

Q By the same token you are able to tell us what percentage of the workers in Arizona are migratory?

Either from state to state or within the state? [225]

A No, I couldn't. I don't know.

* * *

Q What is the typical size of the units that you organized in California this past year when you had all of those elections? [230]

A They ranged all the way from three employees to fifteen hundred — eighteen hundred employees.

Q Can you give us a typical size? [231]

A There isn't anything typical in agriculture. It is all over the map.

* * *

Q Okay. So that if you have — let's just make it easy — one hundred employees working at the peak of the harvest, that would be the projected total — then how many people would have to be working in order for you to file your petition? [243]

A Fifty.

Q Fifty, right. At least half.

A At least half.

Q And the eligible voters in the election, then, would be fifty, is that correct?

A In that case, yes.

Q And therefore half of fifty or twenty five plus one could vote for the union, could it not?

A They could conceivably do that, yes.

Q Right, so that is twenty-six per cent in that situation.

A I haven't seen it happen but I am sure it could happen.

* * *

Q So it is your testimony — or is it your testimony that in fact access is going to be denied in Arizona.

A Yes.

Q You believe that it is going to be denied?

A Yes, I believe so.

Q And you base this opinion upon what?

A Upon the — principally upon the advice of our attorneys but also from previous experiences.

Q But you understand that whether it is denied or not is a matter of legal interpretation.

A Yes.

* * *

Q I believe you testified that you really didn't know where the people who worked in Maricopa County lived.

A That is right.

* * *

Q And Mr. Ratkowski's question was that assuming that the Act were to be interpreted as requiring — interpreted to mean that the calendar year was some time in the prior numbered year — in other words this is 1977 but Mr. Ratkowski's interpretation was that you assume that the person worked during the year 1976 for the employer that in that case you felt that it

would deprive the right to non-repeat workers to vote, is that correct? Workers that didn't repeat their employment with that individual?

A I don't know that I understand your question very well. Let me see if I can qualify my answer. What I am saying is, my understandng of the Arizona law according to the interpretation given to me by our attorneys is that in order to be eligible to vote that employees must have worked with that employer previously, the year past, and I think it was mentioned a calendar year — the words calendar year. [259]

Because of that interpretation, then, the practical application would be that it would be extremely difficult for many workers to be able to vote in 1976 because some would have not worked in 1975 with the employer and some of the employees that worked with the employer in 1975 would not be working in 1976.

Q But that answer does depend upon the interpretation of the statute that your counsel supplied.

A If the interpretation is what they tell me it is, then the practical application would have that effect, yes.

* * *

EXCERPTS FROM TESTIMONY OF STANLEY LUBIN

Q And have you compared the Arizona Agricultural Employment Relations Act with the National Labor Relations Act?

A Yes.

MR. McCRORY: Is there a statute marked as an exhibit?

THE CLERK: 2?

MR. McCRORY: Yes, that is what I want.

Q (By Mr. McCrory) Mr. Lubin, let me show you Exhibit 2 which has been submitted by Plaintiffs. Is that the Act we are referring to?

A It appears to be, yes.

Q Going back a minute to your preparation for the trial, have you read any of the regulations of the Board?

A Which Board?

Q The Arizona Agricultural Employment Board.

A Yes.

Q Are you familiar with the procedures under the Arizona Act to establish recognition of the Union's collective bargaining agent?

A Yes.

Q Directing your attention to Section 23-1389 beginning on Page 15.

A I have it.

Q Is that the section that establishes procedures for recognition?

* * *

Q (By Mr. McCrory) Mr. Lubin, could you briefly [319] just outline the procedures under the Arizona Act for obtaining of a secret election for recognition of the Union as bargaining agent?

A A petition has to be filed with a showing of interest, and an investigation is made to check into the good faith of the petition, the showing of interest. A hearing would be scheduled or a consent entered into and ultimately a decision made as to whether or not there should be an election, and then there will be held ultimately a secret ballot election unless the peti- [320] tion is dismissed already. And ultimately after the election is held there will be certification of results.

Q With regard to the procedures from the filing of the petition to the time of the election, are those procedures comparable based upon your experience to the procedures under the National Labor Relations Act?

A In some respects. In terms of timing and the types of procedures that are held, yes, they are comparable.

Q And based upon your study, your legal practice and your experience in dealing with labor relations, the National Labor Relations Board, do you have an opinion as to the practical effects of these required procedures on the amount of time it will take to complete the process from the petition to the date of the election?

A Yes, I do have an opinion.

Q And what is your opinion?

A I would estimate that it would take between six and seven weeks to —

MR. JONES (Interposing): Before the witness answers this is precisely the kind of question I am referring to. He has gone, now, into an area which cannot be related to any experience by Mr. Lubin. [321]

JUDGE MUECKE: I think it would be useful, perhaps, to give the basis of his opinion before he gave an opinion so that we would more clearly understand whether or not the opinion would be otherwise admissible. So when he says he has an opinion it might be useful if you would ask him what is the basis of that opinion, what he has drawn upon to give the opinion you want him to give.

Q Upon what do you base this opinion?

A My opinion is based upon my nine or ten years of experience under the National Labor Relations Act and how long it takes to have an election, how long it takes to complete each step of the process toward the election once the petition is filed, coupled with my understanding of the provisions of the two statutes which, as I have indicated, are similar in that regard.

Q And in your opinion what would be the amount of time that would be necessary to complete this process?

A Roughly six to seven weeks, perhaps a little longer and rarely a little less.

Q Can you now break down that time in terms of the amount of time it would be necessary at various stages of the process, beginning with the first process? [322]

A Okay.

JUDGE MUECKE: And I think it would be useful also, if you did that, to give us specific references to the law which you are talking about. Is that what you are going to do on the different stages?

THE WITNESS: Yes, I am, Your Honor.

JUDGE MUECKE: Okay.

THE WITNESS: Under the National Labor Relations Act or under the Arizona Act, it would be Section 9 of the National Labor Relations Act and Section 23-1389 of the Arizona Act, a petition has to be filed with a showing of interest of support and assuming that that was day one, irrespective of the actual calendar date, the Act charges the agency with investigation and docketing functions prior to scheduling of any hearings. And both statutes, I would assume, are approximately the same in that regard.

Now if the Arizona Board acted expeditiously in making that as another assumption which I am sure they will do, based upon the forty years that the National Labor Relations Board has operated, it takes approximately one to three days to conduct the initial [323] stages of the investigation in order to determine a number of things. First of all, they have to know how many people are employed in the bargaining unit petitioned for. They have to know the names of those employees. They have to check those names with the showing of interest that has been demonstrated by the Union when it files its petition or by the employer that

files its petition or the employee that files it. And they also have to determine that the unit is arguably a unit, that the employer is arguably covered by the statute, and that the unit described in the petition is one that is arguably covered by the statute.

Assuming prompt action this would take between one to three days. At that point a notice of election—a notice of hearing has to be sent out, and generally under the National Labor Relations Act it takes between fourteen and twenty-one days from the filing of the petition to actually holding the first day of the hearing. This requirement would put you down around the fifteenth to eighteenth day if you take the middle of that period for the holding of the first day of hearing. A typical hearing will last between one and two days and that adds another day of time. Under the National Act you have a seven day post hearing briefing requirement, which if the parties ask for it the hearing officer must give. That is not the case under the state law. Under the state law the briefing is discretionary with the hearing officer.

So you may eliminate that seven day period. But there is still a decision making period which has in my experience averaged between ten and fourteen days under the National Act from the date of the hearing to being closed. This is due in part to briefing and in part to the necessity for the transcript to arrive.

JUDGE MUECKE: How many days did you say?

THE WITNESS: Between ten to fourteen days after the hearing closes to a hearing officer's decision or recommended decision as the case may be. Being a pre-election situation, it is a decision of the Regional Director that usually comes out.

Now assuming that an election is directed, under the National Act the Labor Board holds the election between twenty-five and thirty days after deciding —after the date of the direction of that election. This is required because of its requirements for the production of what is known as the Excelsior list or names [325] and addresses of the bargaining employees eligible to vote, which must be in their hands seven days after the hearing—after the decision issues and at least ten days prior to the election being held. So they have just added a few extra days to give the Union an opportunity to use that list and solicit support among the people. And if you add these up you get approximately six and a half weeks to seven and a half weeks.

Now under the state law there is one major differences that adds some time to the short period that I have given you, the six week estimate, and that is that once a notice of hearing is sent out we have the State Administrative Act—Administrative Procedure Act which requires a twenty-day notice of hearing as the minimum notice period unless a statute says otherwise and I do not believe that this statute says otherwise.

And taking that into account I would suggest that under—well, under the National Labor Relations Act, as I am saying, six to seven weeks, under the state

law I would suggest that from the date of petition to the date of election, because of these time frames I would estimate seven weeks.

I guess, Mr. McCrory, I should also add that because of a requirement in Section 23-1389 (I) which is on Pages 17 and 18, even if a decision came down on the day of the hearing you still have a minimum of ten days after that hearing before the election can be held, because this gives the employer by statute ten days to provide the Board and the Union with a list of agricultural employees qualified to vote.

And assuming that that list is used or is designed to be used by the Union as well as the Board in determining the qualification as well as for organizing purposes, and election soliciting purposes, so to speak; assuming another four to five days as a possibly reasonable time after the production of the list, I would suggest that the election could not be held less than two to two and a half weeks after the decision came down here under the state law. And that goes into that seven week calculation, too.

Q How often, in your experience, has the National Labor Relations Board met the time schedule you have outlined in a typical representation case?

A In a litigated case it is rare to meet that time schedule because, one, it is rarer—let me rephrase that. In a litigated case, especially in an industry where you have high turnover amongst employees, it is rare for the Board to meet that kind of a time schedule because the employer knows that turnover will work to his advantage, and therefore time will work to his advantage, and therefore he will try to get—obtain

continuances of hearings, extensions of times on briefs. It is part of the game, so to speak, that is played when you are going through the litigation process.

Q You have testified that time delay would work to the advantage of an employer. Upon what do you base this opinion?

A Upon my experience. I have noticed that in the higher turnover industries, especially—that would be especially true in the lower skilled industries where you have higher turnover—you would find that the longer period of time that elapses from the day a petition is filed until an election is finally scheduled, the more likely it is that the Union will lose the election, primarily because of the fact that most of their supporters are gone by the time the election is actually held.

Q Is there any provision or method which would permit either a Union or employer to obtain an election without complying with these procedures?

A It is not a question of not complying with the procedures. There is a consent procedure that allows the parties to consent or stipulate to an election and that would obviate the need for a hearing and that is found in both statutes, the Federal and the State. [328]

Q And who may invoke the consent procedure?

A It would take an agreement by all parties.

Q Is there a similar consent procedure? You testified there is a similar procedure under the National Labor Relations Act. How does that consent procedure affect the time required from the filing of the petition to the date of election?

A As a practical matter it would not, because one of the—my experience under the National Act has been that in order to obtain a consent and avoid the expense of litigation, a Union will be forced in effect by the employer's demand to go for a longer election campaign period, and in effect you end up with an election date pretty close to what you would have obtained had you gone to a hearing anyway.

Q Mr. Lubin, I show you now Exhibit 1 which is a chart of the seasons for various crops in which the harvest is conducted and workers are employed in harvest operations. Could you briefly examine some of those figures?

A Am I to understand that these numbers are people employed in a given week of a harvest?

Q Yes, they are.

A I have glanced through it.

Q Assuming that it took a three to six week period for the initial organizing prior to the filing of the petition, and based upon your experience in working with the National Labor Relations Board with election procedures, what would be the practical effect of those election procedures and time required to complete them on the holding of an election in seasons such as these?

A It would depend in part on when the organizing drive began. If you are asking me to assume three to six weeks I would have to know when the three weeks began.

Q Assuming at the beginning of the harvest.

A Okay. Looking at the figures in your Plaintiff's Exhibit No. 1, most of your harvest seasons seem to last from approximately four to eight weeks. There are a few of them that are longer than that, but most of them seem to be in that period of time.

Now if the organizing drive began on the first day of the harvest season, it would appear from this chart that it would be impossible to hold an election before the end of the harvest season was well over.

Q And do you have an opinion as to the practical effect of applying such election procedures with the required time to complete them on union organizing activities? [330]

A If we assume that there is a number or are a number of employees still at work, albeit a small one, after the end of the harvest, I would assume that what this would do is result in a very small number or very small percentage of the work force of a given employer making the decision that we bind the employer or lock in the bargaining rights and obligations to cover hundreds of people, possibly thousands.

Q And is there any means by which such an effect could be avoided other than the consent of the grower to waive his rights under the statute?

A I imagine by an amendment to the statute.

Q It has been suggested that perhaps an election could be deferred until the next peak season. Would you have an opinion as to the practical effect of such a procedure?

A It depends on how long a deferral that is. If the season is an annual one it means that the people will lose their bargaining rights for a full year. If the season is twice a year or if there are two harvests a year that means it would pull them back to at least six months.

JUDGE CRAIG: Under the National Act, don't [331]
some unions use a mail ballot?

THE WITNESS: No. The policy of the National Labor Relations Act is against mail ballots. You find that very commonly used in the Railway Labor Act but not under the National Labor Relations Act. I don't know of an election the Labor Board has ever conducted by mail ballot.

JUDGE CRAIG: Don't the Longshoremen use it?

THE WITNESS: I don't believe so. If they are covered by the National Labor Relations Act I doubt that they have.

JUDGE CRAIG: I sat in a case in Oregon last year and that is what they were arguing about. The conduct of the election was done by mail ballot.

THE WITNESS: If it was covered by the Railway Labor Act it would have been done that way. If it is covered by the National Labor Relations Act if that is the way that was done it was a rare case indeed.

JUDGE CRAIG: Do you know if the Longshoremen are under the National Railway Labor Act?

THE WITNESS: Some of them are under it. It depends on what they are loading; if they are loading box cars—

JUDGE CRAIG: Loading on ships—cargo; un- [332]
loading and loading cargo, ships, sea-going vessels.

THE WITNESS: I can check that.

Q (By Mr. McCrory) Based upon your experiences in dealing with organizers and advising them of legal requirements for elections do you have an opinion as to the effect of delays in obtaining the election would have upon their organizing activities?

A Well, yes. Typically delays always result in—not always but generally result in employer victories, although the vote total is for the Union. This is due in part to turnover, in part to frustration, in part to fear, and in part to a loss of interest.

Q Directing your attention to Section 1389(J) Page 18 Lines 14 through 11.

A Lines 14 through 11?

Q Line 4 through 11.

JUDGE KILKENNY: Page again, counsel?

MR. McCRORY: Page 18.

Q Is this the provision which you understood to refer to—to apply to the procedures for decertification election?

A This could be either a decertification or a change in certification.

Q Is this provision similar to the provisions of the [33
National Labor Relations Act?

A No, it is not.

Q And what would be the major difference?

A There is no provision here for a hearing. Under the National Labor Relations Act, whenever any petition is filed there was a provision for a hearing. This specifically omits it from subsection J of Section 23-1389.

Q And do you have an opinion as to the practical effect of such a difference?

A You will have an election very quickly. As a result of an investigation there would be an administrative investigation of a showing of interest, which, as I indicated above, will normally take between one and four days or one and three days assuming prompt action, and an election can be directed in a matter of two weeks.

Q Are there any eligibility requirements under the National Labor Relations Act that you are familiar with?

A I am not sure what you mean by the question.

Q How is the eligibility of a worker to vote in a representation election determined?

A By the National Labor Relations Board applying [3
its view of the statutory definitions as well as its policies developed under the Act.

JUDGE MUECKE: I am sorry, under J of the Act on Page 18, in Exhibit 2. When you said an election would be had quickly in two weeks, were you referring to the effect of that section?

THE WITNESS: Yes.

Q (By Mr. McCrory) Mr. Lubin, referring again to Section J, that does apply, in your opinion, to only the decertification or change of certification rather than recognition.

A As opposed to the filing of a petition for certification in the first instance, this one specifically relates to a situation where you already have a certification in existence, yes.

Q Directing your attention now to Section 23-1382-1 which is on Page 22, Lines 22 to 27.

A You want me to just look at the last five lines of the Section, is that what you are asking?

I am sorry. I am on Page 3.

The definition of "Agricultural employee"?

Q Yes.

A Okay. Which lines, again?

Q Lines 22 to 27.

A I have it.

[335]

Q If that section establishes a requirement that in order to vote in a representation election under the Arizona Agricultural Employment Relations Act, a person must be at least sixteen years of age, would there be any comparable provision in the National Labor Relations Act?

A No.

Q Do you know if there are any situations where persons under sixteen have been permitted to vote under the National Labor Relations Act?

A I know that the Board in its administration of the Act does not put an age requirement in any of its decisions and if there are people employed at a given location who are under the age of sixteen, and who meet the tests set out in that decision for eligibility, that is belonging in the bargaining unit and basically a permanent employee, et cetera, they will be eligibile to vote.

JUDGE CRAIG: Is there a child labor law in Arizona that has some effect on this?

THE WITNESS: The child labor law in Arizona I believe exempts agriculture from its coverage.

JUDGE CRAIG: What is the age limit on child labor?

THE WITNESS: I think it is sixteen. It may be fourteen. I haven't looked at it in quite a while.

JUDGE CRAIG: Thank you. [33

Q (By Mr. McCrory) Directing your attention again back to the section on elections, Section 1389(D) on Page 16, Lines 27 to 33.

A I am sorry, what page?

Q Page 16.

A Lines 27 to 33?

Q Yes.

A I have it.

Q And is this provision that you understand to apply to the procedures for a runoff election?

A Those are the procedures applying to a runoff election under the State Act, yes.

Q Assuming in the intial representation election there are three choices on the ballot, two unions and no union and none of those choices reaches a fifty per cent majority so that a representation election was necessary—a runoff election would be necessary.

A That is what this provision takes in.

Q And if this section requires in any election the voter shall be afforded a choice of no union and that applies to a runoff election, is there any comparable provision in the National Labor Relations Act?

A This is different than the comparable situation in the National Labor Relations Act. Under the National Labor Relations Act the top two choices appear on the runoff.

Q Do you have an opinion as to the practical effect of a provision which required no union on any runoff ballot regardless of its votes in the previous election? [337]

A Yes. It could in some circumstances allow a number of employees—say you have a hundred employees in a bargaining unit that are eligible to vote and they all vote, two of them can determine the choice of the other ninety-eight by voting for no union and if the other two unions split the remaining votes or even if it is fifty to forty-eight and two for no union, the fifty and the two will appear on the ballot rather than the fifty and the forty-eight.

This, of course, would only apply if the two was the no union. If one union received two, they don't get a second shot.

Q Is there a procedure under the National Labor Relations Act whereby a union may be recognized as a bargaining agent for the—exclusive bargaining agent for the majority of employees where it has not won a secret ballot election?

A May be certified?

Q May be recognized.

A Recognized, yes. Certified, no.

Q And a bargaining order may be issued in such circumstances ordering bargaining between a union and an employee.

A Despite the lack of a certification.

Q Despite the lack of winning a secret ballot election?

A That is correct. Bargaining orders can issue under the National Act without the need for certification.

Q And based upon your experience what sort of situations would be involved in these cases?

Q The vast majority of the cases where this happens is because of very serious unfair labor practices by the employer which has made it impossible for the Union to win a fair labor election review of the Board.

Q And could you briefly describe what you mean by the unfair labor practices.

A Unfair labor practices being acts or actions engaged in by an employer which are prohibited by Section 8 of the National Labor Relations Act.

Q Would you give me any examples based upon your own experience as to the types of acts that would create such a situation?

A Sure. Discharge of Union adherents; threats to discharge; giving of raises if people would vote no in order to induce people to vote no; illegal threats of closing the plant or moving if the Union comes in. [339]

These are just a small—the range of illegal conduct can be as wide as the imagination of an employer who wants to violate the law.

Q And based upon your experiences would you have an opinion as to the practical effect if the Arizona Agricultural Employment Relations Act had a provision which prohibited any such bargaining order absent the winning of a secret ballot election?

A It would have the effect of making it profitable in many cases for the employer to violate the law so long as he was willing to in a sense pay the price of having repeated elections, because the worst thing that could happen to him is that the Board would order repeated elections. In effect it would create a license to the employer who wants to violate the law.

Q Referring to Page 10 Lines 2 through 6, Section 1385 (C)—

JUDGE KILKENNY: Page 10?

MR. McCRORY: Page 10.

Q Section C begins on Page 9:

A Which lines do you want me to read? [340]

Q Lines 2 through 6. And if you would also look at the Page 9, beginning of Section C.

JUDGE MUECKE: Look at 9 what?

MR. McCRORY: The beginning of Section C. It starts on Page 9.

THE WITNESS: I have read it.

Q Referring specifically to Lines 2 through 6 at Page 10, is there any similar provision in the National Labor Relations Act?

A There is not.

Q Do you have an opinion as to the practical effect of the difference between these two statutes?

A It is very common for employers and unions to make predictions regarding existing or proposed conditions of employment or continued operations in election campaigns, and what this section is doing is, it makes it impossible for the Board to hold that some of the predictions may have gone too far and constituted a threat of plant closure or a threat of termination of everybody's employment if the Union should win the election, things of that kind, which the National Board has ruled are improper.

Q And referring specifically now to Lines 6 through 12 of the same section, the same page. [341]

JUDGE MUECKE: What lines?

MR. McCRORY: Lines 6 through 12, the next sentence.

A I have got it.

Q Is there any comparable provision in the National Labor Relations Act?

A No.

Q And what, based upon your experience, would be the practical effect of the difference between these two statutes?

A This would make it impossible under any circumstances — absent the approval of the employer or the grower — for the Union to have access to the workers on the property in order to communicate with its membership.

MR. JONES: I would like to object to that and move his answer be stricken. He has given strictly an opinion involving interpretation of the wording of this statute. It is not related to anything else, either under the National Statute or his experience.

JUDGE MUECKE: Well, perhaps if we were to have you phrase it that you assume that the words here — let's see — we did this earlier, if you recall. Then we can argue about the significance of that, whether when he says that this means this portion here:

> "... no labor organization shall be required to furnish or make available to an employer, materials, information, time or facilities to enable such employer or labor organization as the case may be, to communicate with employees of the employer" ... and so forth.

You are asking him to assume that that means, those words, that the Union cannot have access to the employer's premises.

Would that be a correct statement of your interpretation of the law?

MR. McCRORY: Yes.

JUDGE MUECKE: All right. Now I think then you will argue that is not correct, but if that be correct, what would be, then, the effect of that on whatever he wishes to say?

MR. JONES: My objection was he asked the witness what it meant.

JUDGE MUECKE: I agree with you, that is why I asked him to reword it.

THE WITNESS: Your Honor, what that would do — the difference between this and the National Act is that under the National Act, for example, when you have isolated property or inability to reasonably expect an organization to be able to communicate with employees of the employer when a petition is pending, the Board has the authority to direct the employer to allow the Union on the property to organize during off work hours and in off work areas. And what this is, I believe, is a statutory statement by the legislature that they don't like that rule.

JUDGE MUECKE: Well, you were asked to assume that that is the effect of it.

THE WITNESS: That is correct. Assuming that that is what this means, that is the effect of it.

Q (By Mr. McCrory) Directing your attention now to Section 1384, Page 5, Lines 13 through 31.

A I have it now.

Q Is there any comparable provision in the National Labor Relations Act?

A No.

Q Assuming that the rights reserved to the employer as specified in Sections 1, 2, 4, and 5 were topics that could not be bargained about by a Union, what would be the practical effect of the exclusion of such topics from the bargaining table?

A Assuming that these were not negotiable?

Q Assuming these were not negotiable.

A The effect would severely limit the scope of any contracts that a Union could insist upon with that employer, because it could not then cover — it could not require the employer to bargain about the topics, therefore the employer can just sit there close-mouthed and refuse to talk about it and the Union could not do anything about it. [344]

Q Looking first to Section 1, Line 16, assuming that the items specified in that section were excluded from the bargaining process, based upon your experience what would the effect be upon Union organizers and Union activities?

A It would inhibit a Union in its ability to adequately represent employees which in effect would tend to create a more apathetic feeling among the employees who would be more inclined to say what is

the use, you can't do anything for me anyway. And this would tend to deny them of their organizational rights.

Q In your experiences in both directly participating in collective bargaining negotiations and advising unions and your familiarity with the area, what sort of topics would be — what sort of situations would be effected by the exclusion of these topics?

A Perhaps I better first say what I generally view as included.

Based upon the National Labor Relations Act and my activities operating with unions that are covered by it, typically they can negotiate about anything that affects their working conditions.

The phrase, I guess, in the Statute is: wages, hours and terms and conditions of employment.

That is very, very broadly defined by the National Labor Relations Board and it would cover a wide range of topics. Making the assumptions that you have given me, if these topics here are non-negotiable, this would eliminate a large number of areas of interest to the employees from the bargaining table. For example, the time to report to work might even be eliminated if you read it the way you are suggesting in your question.

I can go through and give you a lot more in terms of examples, but basically it would very severely limit the range of negotiations that a union could engage in on behalf of their covered employees in the bargaining unit.

* * *

Q (By Mr. McCrory) Looking at subsection 1, which refers to methods of carrying on any operations, and assuming that that is to be excluded from bargaining, what I wish to know is, based upon your experiences in bargaining situations would such a phrase involve topics that directly affect employees? [350]

JUDGE MUECKE: Your answer to that would be yes and presumably you would tell us what the basis of your opinion is and so forth.

THE WITNESS: Yes. In the situations, for example, where I have negotiated for organizations, we frequently will attempt to bargain about matters such as how a task will be performed, be it by hand or with the use of equipment or how — what kind of work practices should be engaged in by the work crew. [351]

If we felt it important enough, for example, we may not like the particular practice that a particular employer is engaging in with respect to that, we might try to change it through negotiation. And being that it is a term and condition of employment, under Section 8(A)(5) of the National Labor Relations Act the employer is bound to bargain about it. It is a mandatory topic.

If you take the assumption that you have read to me, that is that this section excludes it from bargaining, then I would say that it would have a dramatic effect on that aspect of the kinds of demands that a union can place on the bargaining table.

Q Looking at the next line, it refers to the size and makeup of crews and assignment of work.

JUDGE MUECKE: Excuse me, before you get to that — and would it be accurate to say that your comments related to methods of carrying on any operation or practices thereon? That is what you were commenting on?

THE WITNESS: Yes, that is what I understand the question to relate to.

JUDGE MUECKE: He had asked you the whole [3
of Paragraph 1.

THE WITNESS: I am sorry. I thought he was talking only about the methods of carrying on operation.

JUDGE MUECKE: Okay.

JUDGE KILKENNY: It has been limited.

JUDGE MUECKE: Thank you.

Q (By Mr. McCrory) Proceedings now to Line 19 where it refers — The same subsection 1 refers to the size, makeups of crews and assignment of work. Are these topics that have, in your experience, come up in a manner which directly affects employees and unions in bargaining situations?

A Oh, daily. Assignments of work is the kind of thing that you run into on a daily basis. That is the basic supervisory relationship that you are talking about there, and who can do a certain job is one of the biggest topics of negotiation, particularly in the building trades industry, in the construction industry trade and to a lesser extent elsewhere. But you also have it in your other industries: auto, steel. Who will do a particular job, what shall that person be paid when they do that job. If a person is a light machine operator and is assigned to work a heavy machine, under what conditions can he do it. Can he do it at all, and if so, what will he be paid when he does it.

In terms of the size and makeup of crews you [353]
run into the same kinds of questions. Is this a job that should be done by five people or six people. How much production should a five man crew be expected to produce. How much production should a six man crew be expected to produce. This is very common, and it goes almost to the core of the entire agreement other than the basic pay scale.

Q And in your opinion if such topics were excluded from bargaining sessions and a union was not permitted to bargain concerning these topics, what effect would that have upon union activities and union organizing?

A Well, it would — the employees would become more questioning of the benefits that they can obtain by joining a union: what good can you do for me; you can't talk about how many people do how much; they can still force me to do all this kind of extra work; you can't do anything about it. They become more and more apathetic, more and more apprehensive, and

wonder whether it is really worth it at all, and they would tend not to associate with fellow employees who might want to belong to the union.

Q Going next to subsection 2, which states: to hire, suspend, discharge or transfer employees in accordance with his — referring to the employer — judgment of their ability.

Taking that subsection, are those topics that, based upon your experience, would directly affect presently employed workers?

A Not so much the hiring, because that is a matter that is traditionally left solely to the employer in terms of judgment and ability. But with the exception of if he refuses to hire for engaging in union activity.

But putting that problem aside, with respect to the suspension, discharge or transfer, again you find this kind of a provision is typically found in grievance procedures in connection with the rights of an employer to discharge; whether or not he has to give warnings before he actually discharges, how many warnings. Progressive discipline questions are involved here, and these are all negotiable matters under the National Act and they are frequently found in contracts. Unions always insist upon some kind of a system that would protect what they perceive to be the rights of their membership and the employees they negotiate for.

Q And do you have an opinion as to whether the exclusion — if these subjects were excluded from collective bargaining what the effect of that exclusion would be?

A If would be the same as I indicated above; more strongly, though, because this is an area that is even more basic. This is probably the second most important item in a contract after wages and economic conditions. We are talking here about job security.

Q Going back, now, to the election section, please turn to Page 16 Line 1.

A This is the section dealing with the investigation and holding of hearings.

Q Yes, it is.

A I have it in front of me.

Q You have testified that you understand that under the Arizona Agricultural Employment Relations Act the preliminary procedure would require first the investigation of petition and second, a hearing. What I would like to know is: is this the section upon which you base those statements?

A In part, section C to me requires a hearing, a notice of hearing and an investigation prior to that.

Section D discusses what happens after the [356]
hearing is held. Direction of election should issue unless the petition is dismissed, and that is found lower down in the same page at Line 19. And Section H specifically calls for the allowance of entering into stipulations for consent elections and waiver of hearings.

Reading those three sections I believe that a hearing is required prior to the holding of an election unless there is a waiver. Except in the circumstances

covered by J, which deals with the decertification type arrangeent which we discussed earlier, because that sets out a different procedure.

Q With respect to just the sections that deal with the hearing procedure, is there similar language in the National Labor Relations Act?

A It is laid out in a different order, but the word for word language is virtually the same. There may be one word difference, but I don't think it is different in any way.

Q Based upon your years of experience with the National Labor Relations Board, has the identical language in the National Labor Relations Act always been interpreted to require both the investigation and the pre-election hearing?

A I can't speak for others, but I have always interpreted it that way. [357]

Q You mentioned sub-section J was different, that that refers to decertification process.

A Yes.

Q Could you explain what the difference is?

A Well, the petitions contemplate — the procedures contemplated by C talks about two kinds of petitions: a petition by an employee or a union or a group of employees who are asking to have a union certified, or a petition by an employer asking to have a union either certified or not certified. That is C-1 and C-2. And in such a case hearings are required as I have just indicated—at least in my view.

Now J deals with the situation where there is a union certified or there is an agreement with a union and an employer covering a certain group of employees and these employees or a certain number of them decide they want to get rid of that union, either replace it with another one or have no union. In such circumstances that is the one covered by J and in such a circumstance they specifically omitted from there a hearing requirement, and in fact the Statute says that as soon as such a petition is filed covered by the language of J, the Board shall conduct an election. It talks about an immediate election.

Q Assuming that sub-section J provides for a decertification of a union, based upon a thirty per cent showing on a petition, without a requirement for a hearing and it permits a fairly rapid election, what would be the practical effect of such a procedure on an existing union? [358]

A Well, it would allow — of course the employer can choose his time for filing. He can do it during a very slack season, have a fast election while he has very carefully selected people at work before the influx of the harvest crop before the influx of employees needed for the harvest, and get rid of the union even though a vast majority of his potential employees may really still prefer one and destroy a union in effect — at that location or for that employer.

* * *

Q With regard to subsection (F), the final sentence states that such a petition shall not act to stay the election proceeding. [361]

Would such a provision, such as (F), affect the time table that you had outlined previously in your testimony?

A No.

Q And why is that?

A Well, because it will not stay the proceedings. In addition, this covers a rather narrow area. We are talking about how the cards were obtained, and that is the only area this covers. It doesn't deal with the other challenges to the petition that the employer may raise. For example, if he wants to question the description of a unit or his own coverage by the statute, or anything that deals with any topics other than the three or four mentioned in subsection (F), he would have to go the regular route and litigate it in that fashion and those proceedings, of course, do effectively stay the election.

Q Could you briefly describe the topics other than those included in (F) which are generally litigated and give an idea of how — what percentage of these would be raised in pre-election hearings.

A Percentages are impossible to give you, because every topic can be raised and depending on the facts of every case they are raised or not raised but the topics that are generally raised in pre-election matters are as follows: first, whether or not the employer is covered by the statute. On rare occasions somebody may even raise whether or not the union is a union within the meaning of the statute. That one I can say is very rare.

But in addition, you will have what should a unit be, should it be bigger than the unit petitioned for or should it be smaller or should it be bigger in some respects, smaller in others. What classes of em-

ployees are eligible to vote, and what classes are not eligible to vote. Where should the election be held, on the property, off the property; during working hours, before working hours, when shall it be held. Shall it be held in an office, out in the field somewhere, or in the working areas or what.

Questions such as supervisory status of various individuals will be raised, questions such as whether certain individuals are confidential and therefore should be excluded are raised; managerial questions; questions whether certain people belong in one unit as opposed to a different unit are raised. All of these things can come into a pre-election hearing.

Q And is it your testimony that all these issues must be decided at a pre-election hearing before the order directing an election under the National Labor Relations Act? [363]

A Most of them must. Occasionally the Board will duck an issue and leave it for post-election hearing, but unless there is an agreement reached most of those must be decided, yes.

* * *

Q (By Mr. McCrory) I would like to direct your attention to Page 26 Line 8 through 30.

JUDGE MUECKE: 31 or 30? [364]

MR. McCRORY: Line 30, subsection (B) of 1393.

A I have read it.

Q What is your understanding of this section?

A Authorizes and clears in certain circumstances to obtain temporary restraining orders and injunctions from court of competent jurisdiction which would be superior courts.

Q And in what circumstances do you understand that this procedure would be invoked?

A Well, there are two separate times that this talks about, two different kinds of orders that are sought: one for each circumstance. In one case a ten day restraining order can be granted if there is any strike or threat of a strike or boycott by a union against an agricultural employer. That is one situation.

The second situation is if the employer believes that a strike is unlawful, then they can get a more permanent kind of an injunction.

Q Staying just for the moment with the first situation and assuming that the Act provides that a strike by farm workers may be enjoined for ten days at the request of a grower, is there any similar provision in the National Labor Relations Act?

A Not at the request of the grower, no. There is no [365]
single provision, or of any employer, for that matter.

Q What would be the practical effect of such a provision?

A Well—

MR. JONES: Let me raise this objection to the question. The provision really goes to the agriculatural industry. The question as raised relates to the National Labor Relations Act. Unless he can relate it somehow to a similar industry it has no relevancy at all, it is unrelated, really.

JUDGE MUECKE: Okay. The record may so show. Go ahead. If you are correct we will disregard it and strike it and you can so argue. Go ahead.

A Under this Act whenever any union decides to strike or threatens to strike or engages in a strike, or boycotts, even if it is lawful the agricultural employer can obtain by a proper application to the court a ten-day restraining order enjoining that strike or boycott.

As a condition of doing so he must agree to arbitrate the dispute that gave rise to the threatened strike or boycott.

Now under the National Act that is not the case, and it is not the case in any industry covered by the [366]
National Act, that an employer can do this. Even in industry, for example, packing of food, which is covered by the National Act, the same provisions apply there as do in the rest of the law despite the fact that they are dealing with perishables there.

Now so long as he is willing to put up with that ten day — with the requirement that he arbitrate, he can obtain that ten day injunction, so to speak.

What this will do is, it gives the employer an option. If the employer thinks that the strike is ineffective he will just let the strike go on and take whatever punishment is meted out as a result of that strike — which he obviously will think is minimal or at least that he can live with.

If on the other hand he feels that the strike is effective and is hurting his operation, at his own option he can then go out and get an injunction stopping it.

Typically, in our history, we used to have a lot of injunctions and strikes and that is one of the things that, you know, the Norris-LaGuardia and other statutes have avoided, have stopped. They have let the economics of the Union versus Management issue resolve itself except when there is a national emergency in which case under certain procedures the Government can impose a sixty day cooling off period. But [367] that requires findings by the Government officials of a national emergency. There is no such finding here. At his own whim the employer makes his own decision in his own way based upon his own calculations and his own feelings and his own fears.

* * *

Q You were asked several questions by Mr. Jones, [462] concerning the provision regarding the use of employer facilities on Page 10 the last sentence, sub-section (C).

A Yes.

Q Assuming that we are dealing with an employer, an agricultural employer who has no farm labor camp, that that is simply not in the picture and has nothing to do with the operation of this section and this hypothetical. Would you still have any problems with the sentence?

A I have problems with that sentence for a number of reasons. I believe that that sentence expressly prohibits the Board from issuing an order under any circumstances requiring access to the employer's facilities.

Whether or not you apply the word "facility" to apply to farm labor camps or just to the farm itself and to the areas of farming, packing, et cetera, is not [463] controlling in my analysis because even if they have access to the camp there may still be circumstances under which they should still have access to the remaining facilities on limited occasions. I believe that this is a direct attempt by the legislature to overrule, so far as this statute is concerned, what the National Labor Relations Board and the courts have done in connection with allowing access by labor organizations for organizational purposes on somewhat well defined albeit limited grounds.

Q And based upon your experience are there circumstances under the National Labor Relations Act when use of employer facilities are necessary for an organizing campaign?

A Yes. You have situations in some cases the employees live there as in a case involving Grossingers of New York where access was granted because the employees virtually spent a full twenty-four hour day seven days a week on the property.

Then you have additional cases; I think the case was Babcock and Wilcox, I am not quite sure of the name, in which for some period of time now that has been the law, which states in effect in remote areas diverse employees living over a wide area traveling dis-

tances, and there are factors set out which basically go [464]
to the question of can a union have an alternate means and if the Board finds that they do not have a reasonably alternate means of communicating with the bargaining unit employees they will require the employer to give that union access to the property so long as it will not interfere with the operations going on on behalf of the employer.

* * *

Q (By Mr. McCrory) Directing your attention to [465]
the stipulation and Paragraph 4(b) on Page 3, this is the stipulated statement of Board actions.

A I have it in front of me.

Q Would you compare the experience as set forth in these situations where an election was contested with the election situation in Paragraph 4(a) that was shown you by Mr. Jones?

A 4(b) is part of the overall four and it deals with Bodine Produce Fresh Vegetables and Potato Farms and going into 4(c) it appears that this case was filed, a petition was filed on November 12 and a hearing was held on one particular question. That is whether or not Bodine was an employer of the petition for employees and that hearing was scheduled on the 25th of November which is thirteen days after the petition [46
was filed. Then a decision issued sometime around — between the 25th of November and the 5th of December.

Notice of that decision was mailed out, if I understood it, on the 5th day of December, making a determination that they were an employer and directing further proceedings, and to determine whether or not there was a showing of interest and whether or not an order for an election should issue.

That occurred a day later and the election was scheduled, as I understand it — I am not sure an election was ever scheduled. Certainly it was not held because the petition was withdrawn, but even looking at that, that was the only case that was even pending for hearing. This is a one time case which occurred — this is the only case pending before the Board. There were two or three cases consolidated and that was it, and it still took them something like four or five weeks, rather, to remand the case back to first find out whether or not there was a showing of interest sufficient to justify the holding of an election and who knows how long the proceeding would have gone on had the petition not been withdrawn.

Q And directing your attention to Paragraph 5 on [467]
the next page, Page 4, would you likewise compare that case with the ones you have described?

A Well, this of course was that consent case at Cactus that we discussed earlier. Again the petition was withdrawn although the election was scheduled. The comparison to me is that you have a situation with only five or six petitions pending, total, and yet it still took the Board something like four weeks, a rather simple one-day hearing, to determine the question and then they remanded it back for further proceedings.

It indicates to me that if the Act started getting used they would get bogged down pretty quickly and I think that even my estimate of six or seven weeks might be generous on behalf of the speed with which the Board seems to be able to work based on this very limited experience they had.

Q Referring again to Paragraph 5, there is approximately a two week period between the decision and time an election was scheduled although that election was never held. Do you have any reason to believe that any part of this period was due to the providing of a list as provided in subsection (I) which we were discussing earlier?

A If you look at the back of exhibits — I think it is [468]
Exhibit 5 which is attached to this stipulation, the order of December 4 issued by the Board and directing the election, indicated that there were no issues at that hearing other than the showing of interest at Cactus, and they directed — they held a hearing to determine the validity of that showing of interest where they made a decision regarding the showing of interest, found it valid, and then said there were no other issues so they closed the hearing and ordered an election to he held on the 17th day of December. They then ordered the list to be produced by the 16th day of December, which was twelve days, not ten, after the decision issued.

I don't know if that is because of an intervening weekend or not. But it is twelve days rather than ten. It gave the union one day to have the list in its hands, in effect, prior to the election.

Q Going back to Paragraph 4(b) which you described—

A I have it.

Q From the time of filing the petition on November 12 to the time of the decision, assuming that the Board had proceeded to order an election, what would be the minimal time from December 5th that such an election could be ordered, in your opinion?

A The minimum time would have been sometime [469]
after the 15th day of December and that would have been another then days. In my view, though, the minimum time would have been around the 20th of December, because I believe that the intent of 1389(I) is to allow the union to have that list for a few days.

* * *

EXCERPTS FROM TESTIMONY OF JAMES CHERRY

Q All right. Now let's assume, then, that under the [577]
State statute, after the petition is filed on the first day and forwarded to the employer, you would receive it at the latest, say, on the fourth day; maybe earlier if it is hand delivered. A notice is included with the petition setting a date for a hearing under the State Statute and let' assume further that that hearing is scheduled [578]
for the eighth day which would be the following Monday.

Now is there anything that you have seen or been able to detect in the State Statute or its regulatory scheme which would prohibit fowarding that notice and setting that hearing eight days following the filing of the petition?

A No. There is nothing in there that would inhibit that sort of action.

Q Moving, then, to the Federal sector, Mr. Cherry, when the initial letter goes out and an informal conference is scheduled, what takes place in that informal conference, generally speaking? What is the purpose for it?

A Well, generally the showing of interest is checked by the Board agent. That is, the employer in the initial letter is requested to bring a list of the employees in the unit described in the petition, and he brings that to the informal conference and the Board agent will excuse himself from the informal conference and check the list, check the cards from the employer's list, and if it has a thirty per cent showing of interest he merely tells the parties that they have an adequate showing of interest. The employer is not permitted to know who [57
signs the cards and for that reason he is not given any figures as to what the check shows. But it is the same thirty per cent required by the Board as required by the State — by the Federal Board as for the State Board.

Q Under the State law it is correct, is it not, that there is no informal conference referred to or called for in the regulations or the Statute as far as you can tell?

A Well, I think it is an informal conference; they call it a hearing.

Q All right, let's come to that. The hearing is the event which I referred to in my hypothetical as having been scheduled for the eighth day. Let's assume that the parties have been notified and they are now convened for that hearing.

You testified that the filing of the petition raises the question of representation. Would it be possible under the State Statute in that hearing for the hearing officer, whoever it is, to commence the hearing and then make the administrative check — obviously outside the presence of the employer — of the cards against the list at the time that hearing has commenced? Would that be possible under the State Act?

A Oh yes, definitely. [580]

Q Let me ask you, do you have the Statute in front of you?

A Yes.

Q Would you refer to Section 1389 D?

JUDGE CRAIG: What page?

MR. JONES: Page 16.

Q For the record, Mr. Cherry is using his copy of the Statute and the pagination is a little different. It is the same statute.

A Section D?

Q Yes. I am going to refer you to the first sentence commencing "If the Board finds —" Do you have that?

A Yes.

Q The first part of the first sentence is all, which reads as follows:

"If the Board finds upon the record of such hearing that a question of representation exists, it shall direct an election."

Now within the framework of that statutory language, assuming the Board has made its check in that hearing of the showing of interest, is there any reason why it could not come in and at the commencement of [58] that hearing announce on the record that a showing had been made and that hearing announce on the record that a showing had been made and that a question of representation did exist and at that very moment set the date for an election?

A Well, there is nothing; as I read the section they could direct an election even though there may be objections to the validity of the cards presented by the Union. Or the authenticity of them. Or as to whether there is a unit problem or many other problems, and they could direct an election even though there are those problems that would have to be resolved, eventually.

Q And there are specific provisions, for example, on the challenge to the cards which say that a challenge will not stay the date of an election, isn't that correct?

A That such challenges will not stay the election, that is correct.

* * *

Q (By Mr. Jones) Would it be possible for the [584] Board to proceed to do anything else after directing an election? If so, what would that be? With respect to these other issues.

A Well, they could have a hearing later on concerning the other issues and then make a determination.

* * *

Q Has there been any experience, Mr. Cherry, into [588] the National Labor Relations Act in handling elections [589] in seasonal industries where postponements are necessary by reason of losing peak employment?

A Oh yes, we have held many elections that way, particularly in this area in the southwest part of the country.

Q What are some of the industries or what are some of the contexts in which this has been done?

A Well — produce.

MR. McCRORY: Excuse me. I would like to object on the ground foundation hasn't been laid as to Mr. Cherry's experience in this area and at what time starting his Board experience he has dealt with agriculture.

JUDGE MUECKE: Would you ask him that.

Q Have you personally, Mr. Cherry, in your responsibilities with the National Labor Relations Board been involved in or do you have knowledge of the procedures that have been used and applied by the National Labor Relations Board in holding postponed elections in seasonal industries?

A Oh, yes. I have supervised them. I have handled them personally.

Q Give us, then, would you please, some indication as to the nature of the employment involved, what [590] kind of work are the people doing?

A Well, we in the year past, when the farmer or the agricultural people were using brokers to harvest their crops, the NLRB took jurisdiction of your packing house people even to the extent of the lettuce people going into the fields and harvesting the lettuce where they were harvesting some crops that they didn't grow.

In other words, the broker was harvesting the farmers' crops and he would go from one farm to another harvesting their crops. Well, that crew under the National Act are covered and we conducted such elections in those industries.

Q Tell us how you would do that. Procedurally, what would happen?

A Well, they would file a petition and if we —

MR. McCRORY: Mr. Cherry.

THE WITNESS: Pardon me.

MR. McCRORY: May we also have some foundation as to the time period that we are talking about and as to how recent these experiences are.

JUDGE MUECKE: Yes. Time and place.

MR. JONES: I couldn't see it was that important.

Q Can you tell us generally when these elections occurred that you are referring to. [591]

A Well, they occurred some time between 1956 and 1973.

Q Can you be more specific than that?

A I sure couldn't.

JUDGE MUECKE: You mean it was just one time.

THE WITNESS: Oh no, no. No, we have had many cases where we have had to have postponed elections because they didn't have any employees.

JUDGE MUECKE: No, no. The question he has been asking about is packing shed employees in seasonal work.

THE WITNESS: This would be a seasonal industry, where they don't have any employees. They had them at the time they filed the petition, but by the time we get ready to set up an election they don't have any employees. So this could be in areas other than — or the same principles applied in the areas other than farm produce situations. Such as I would say a new plant where they have hired, say, fifty employees, and the Union files a petition for an election and the employer comes in and says: well, in a month and a half we are going to have two hundred employees.

Normally we would set up an election for two months hence or just put this petition in the icebox and hold it for that time. But very often we have held [592] consent elections a month, two months, three — six months in advance.

Q Later?

A (Continuing) — away.

JUDGE MUECKE: Consent elections?

THE WITNESS: Sir?

JUDGE MUECKE: Consent?

THE WITNESS: Yes. Well, the Board is governed by a decision too, sir. When the Board used to handle decisions and in recent years in the last ten, fifteen years or thereabouts the Regional Directors have directed most of your elections and directed most of the orders for election. But the Board itself in years past would conduct elections in seasonal industry and direct that an election would be held at the peak of employment of the next seasonal crop.

Q Which could mean any?

A Six months, nine months, something of that kind. Sometimes three months. Or whatever.

Q Going back, then, to my earlier question as to how this is done procedurally, could you tell us what happens when the petition is filed? How is the determination made and what do you do procedurally? For example with such things as the showing of interest the eligibility list; could you just describe that for us? [593]

A Well, where you have got the seasonal industry and you say a petition is filed for an election in a group of, say, packing shed workers, there is fifty employees there and the employer comes in and says, well, in ten days we are going to be out of business, we will be through. And the Union says, well, we thought you would be there longer than that, but okay, there is no argument. You don't get any arguments in situations of that kind, because the Unions know that the

employers know how long they are going to pack and they very often reach consent agreements at that time that the Regional Director will direct when the election is to be held. And the employer and the Union would then report to the Board when their next peak period of employment comes.

JUDGE MUECKE: Regardless of whether or not they are the same employees.

THE WITNESS: That is right, and the showing of interest would be that of the time of the filing of the original petition. There wouldn't be a new check then, showing of interest.

Q No new showing of interest would be required?

A No new showing of interest under those circumstances would be required.

Q What about the eligibility of employees? When would eligibility be determined for purpose of voting in the election? [594]

A The payroll period immediately preceding the date of the election would be your eligibility date, so it would have nothing to do with the original time. That is, filing the original petition.

Q Now Mr. Cherry, my question is this. Have you been able to determine, detect or see any provision in the Arizona Statute which would prohibit or impair this kind of procedure from being used or utilized in the event of need?

A No, there is nothing in this Statute that would prevent that sort of thing. There is nothing in there concerning that at all.

* * *

Q Mr. Cherry, very briefly I understood the reason you testified that under the State Act elections can go rather quickly is because there is no need to determine the issues of unit appropriateness and so on prior to the holding of the election, is that correct? [670]

A That is correct. Your problems and issues can be resolved after the election has been held. [671]

* * *

FILED APR 20 1978
W. J. Furstenau, Clerk United States District Court For The District Of Arizona
By_____
Deputy Clerk

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA

UNITED FARM WORKERS NATIONAL UNION on behalf of itself and its members, et al., *Plaintiffs,* vs. BRUCE BABBITT, Governor of the State of Arizona, et al., *Defendants,* ARIZONA FARM BUREAU FEDERATION, an Arizona corporation, et al., *Intervenors.*	NO. CIV 72-445 PHX CAM OPINION AND ORDER

Before KILKENNY, Circuit Judge, CRAIG and MUECKE, District Judges

MUECKE, District Judge:

STATEMENT OF THE CASE

Plaintiffs filed this action for declaratory and injunctive relief together with an application for a three-judge court under the provisions of 28 U.S.C. § 1343, 42 U.S.C. § 1983, and 28 U.S.C. § 2201, et seq., seek-

ing to have Arizona's Agricultural Employment Relations Act (AERA), A.R.S. §§ 23-1381, et seq., declared unconstitutional.

Plaintiffs in this action are the United Farm Workers National Union (U.F.W.), on behalf of itself and its members; Gustavo Gutierrez, an agent of the U.F.W. in the State of Arizona; Ruben Alaniz and Matilda Varela, farm workers, on behalf of themselves and all other farm workers; and Wendy Rose, an individual supporter of the U.F.W., on behalf of herself and all other similarly situated U.F.W. supporters.

Defendants are Bruce Babbitt, Governor of the State of Arizona; Jack La Sotta, Acting Attorney General; Bert Fleming, Treasurer; Raymond Long, Finance Commissioner; Gene Blake, William S. Borce, Jack Montgomery, Keith Walton, Jack McManus, Milton G. Sanders, individually and as members of the Arizona Agricultural Relations Board; and Theresa Bond, in her capacity as Executive Secretary of the Board.

The Arizona Farm Bureau Federation, the Arizona Grape Growers Association, the Vegetable Growers Association, all being Arizona corporations; and the Yuma Citrus Shipper's Association, and unincorporated association, all sought and were granted invervention in the suit on November 5, 1973.

Plaintiffs ask this Court to find that the Agricultural Employment Relations Act (AERA) violates the constitutional rights of the plaintiff U.F.W. and its members by restricting the exercise of their constitutional rights in several broad areas.

Provisions of the United States Constitution which plaintiffs claim are violated by the Act are the First and Fourteenth Amendments with respect to specific provisions of the Act, which provisions it is alleged violate freedom of speech and assembly and the due process and equal protection clauses of the Constitution.

In particular, plaintiffs' arguments deal with nine separate issues and at least as many provisions of the AERA in support of their contention that the AERA is unconstitutional. Those issues and the statutory provisions dealt with are: (1) A.R.S. § 23-1385(B)(6) and (7) [generally dealing with secondary boycotts as an unfair labor practice]; (2) A.R.S. § 23-1385(B)(8) [publicity directed at the ultimate consumer regarding nonuse of agricultural product as an unfair labor practice]; (3) A.R.S. § 23-1385(B)(12) [recognitional picketing as an unfair labor practice]; (4) A.R.S. § 23-1389 [employee representation and election procedures]; (5) A.R.S. § 23-1385(C) [access by union to workers on employer property]; (6) A.R.S. § 23-1382(1) [exclusion of stitchers and haulers from AERA]; (7) A.R.S. §§ 23-1384, 23-1385(B)(11), 23-1385(D) [elimination of "management rights" from bargaining process]; (8) A.R.S. §§ 23-1385(B)(13), 23-1393(B) [restriction and prohibition against striking and picketing]; and finally, (9) A.R.S. § 23-1392 [criminal penalties for violation of the Act].

The defendants have disputed the unconstitutional effects of the AERA as claimed by plaintiffs, and have consistently argued that this challenge fails to present a justifiable claim, both as to the substantiality of the federal questions presented by plaintiffs, and because

they argue no case or controversy is presented to the Court. They also ask that this Court abstain from deciding this case. As will become clear in this decision, the doctrine of abstention is not applicable to this case.

Defendants further claim that all testimony and other evidence received by this Court during the course of a four day nonjury trial on January 18, 19, 20, and 21, 1977, should be rejected by this Court as immaterial and completely conjectural and consisting of legal conclusions rather than factual evidence — even opinions and testimony given by the defendants' own experts.

As to this last point, defendants impose too restrictive a view on the admissibility and character of the evidence submitted in this case. Under Rules 701, 702, 703, and 704 of the Federal Rules of Evidence, much of the testimony of the experts relied upon by both parties is admissible either as of the type reasonably relied upon by experts in the particular field in forming opinions or inferences on the subject, or of the kind of specialized knowledge that assists the trier of fact in determining facts in issue, ultimate or otherwise.

A pertinent example would be the opinions expressed by the experts of both sides as to time periods to be expected in the operation of various provisions of the Act, the length of growing seasons, facts growing out of their personal experiences with organizing

unions, or in the operation of analagous statutes, i.e., the National Labor Relations Act or the California Agricultural Labor Relations Act.

Again as to this last point, i.e., testimony concerning operation of the analagous statutes, what is admissible as to this line of testimony is not an opinion of the expert as to the legal effect of the particular provision of the AERA, but rather, given a particular interpretation of a provision, a hypothetical if you will as to the legal effect of a provision, the opinion of the expert as to the practical effect of such an interpretation based on his previous experience and expertise *is* admissible *if* the legal premise on which the question is based is accepted by the court. Even if a hypothetical question as such is not asked, but it is obvious that the opinion of the expert is based on a certain interpretation of a statutory provision, which the court accepts as the appropriate interpretation, then the interpretation and resultant opinion testimony based on this interpretation is admissible. *Burlington Northern, Inc. v. Boxberger,* 529 F.2d 284, 286-87 (9th Cir., 1975); *United States v. School District 151, etc.,* 404 F.2d 1125, 1134-35 (7th Cir., 1968); *Confederated Tribes of Warm Springs Reservation v. United States,* 177 Ct.Cl. 184 (1966).

Evidence presented during the four day trial was introduced relative to A.R.S. §§ 1384, 1385(A)(5), 1385(B)(11), 1385(D), 1389, and on the plaintiffs' claim that the exclusion of stitchers and haulers and sixteen-year olds from the AERA, § 1382(1) and 1382(1)(g), was a violation of the Equal Protection Clause as well as a similar claim that exclusion of those farm workers who did not work for the same

employer the previous calendar year from representation elections was likewise a violation of the Equal Protection Clause.

JURISDICTION

As a result of foundation questions asked of the witnesses, Caesar Chavez, Stanley Lubin, George W. Campbell, and James W. Cherry, this Court accepts all four as experts competent to give the opinions to which they testified.

It is the opinion of the Court that evidence need only be considered with respect to A.R.S. § 23-1389, the provision of AERA dealing with "Representations and elections," and with respect to A.R.S. § 23-1385(C). However, before setting forth the Court's findings as to these facts, the initial issue raised by defendants, namely, their allegation that this Court does not have jurisdiction because there is not a substantial federal question or a case or controversy presented to this Court by plaintiff's challenge to the AERA, will be settled.

Defendants in consistently espousing this view, that this Court does not have jurisdiction, have again emphasized in their argument that a single judge would have had jurisdiction to dismiss this case upon the Article III grounds and that this holds true even more so with the three-judge court.

The lack of jurisdiction motion was initially denied by the district judge prior to the empanelling of a three-judge court. Then the matter remained unresolved by this panel because of plaintiffs' contentions that the AERA was invalid on its face as overbroad and vague with respect to alleged infringement of con-

stitutional rights. This, coupled with the criminal penalty provisions and the complexity of the case, made postponement of the jurisdiction question until after the trial a reasonable course of action. In so ruling we left Article III open as a threshold question and could proceed to a decision on the merits once jurisdiction was settled.

Plaintiffs' response to defendants' Article III attack is that such attack is not valid because of the "Stipulation Regarding Enforcement of the Act," filed by the parties, which reflects some seven suits have been filed against the plaintiff (U.F.W.) and its members and supporters based on sections of the AERA, and that as a result speech activities have been enjoined including handbilling and oral conversations — on three occasions by an *ex parte* temporary restraining order without notice or hearing.

In addition, plaintiffs argue that the Board itself has initiated charges against the U.F.W. which resulted in limitations on plaintiffs' rights. Finally, plaintiffs note that in *Roy's Liquor, et al., v. United Farm Workers* (set forth in the said stipulation), the Board apparently held they had no jurisdiction to consider challenges to the constitutionality of the Act.

From these examples cited by plaintiffs, and not controverted precisely by defendants, it must be concluded that this case is not hypothetical, abstract, or generalized.

As the court said in *Rescue Army v. Municipal Court*, 331 U.S. 549, 67 S.Ct. 1409, 91 L.Ed. 1666 (1947), a case or controversy is created by a showing that one is injured by the statute's operation or that a

construction of the statute to avoid the constitutional questions is impossible. Certainly a challenge for facial invalidity meets the *Rescue Army* test.

In addition to those matters contained in the stipulation, there is the matter of the criminal penalty provision of the statute, which reads as follows:

> § 23-1392. *Penalties.*
>
> Any person who willfully resists, prevents, impedes or interferes with any members of the board or any of its agents or agencies in the performance of duties pursuant to this article, or who violates any provision of this article is guilty of a misdemeanor punishable by a fine of not more than five thousand dollars, by imprisonment for not more than one year, or both. Provided, however, that none of the provisions of this section shall apply to any activities carried on outside the state of Arizona.

It would appear on the face of this provision of the AERA that it cuts across and covers the entire Act, not just a limited area where a criminal penalty might be acceptable. It says in plain English that it applies to "any person" and further to any person "who violates any provision of this article is guilty of a misdemeanor. . . ."

Considering the enormous variety of activities covered by the Act, and the fact that (as will be more fully discussed later) many of these involve First and Fourteenth Amendment constitutional rights, it is clearly a statutory provision so vague that men of common intelligence can only guess at its meaning. Conduct can only be prohibited and punished by certain, clear statutes, and such precision is necessary so

that "the ordinary person can know how to avoid unlawful conduct." *U.S. v. Sullivan,* 332 U.S. 689, 68 S.Ct. 331, 92 L.Ed. 297 (1948). Even closer scrutiny is warranted where the regulation covers freedom of speech. *Ashton v. Kentucky,* 384 U.S. 195, 86 S.Ct. 1407, 16 L.Ed. 2d 469 (1966).

In an area where application of a penal statute may restrict freedoms protected against state invasion by the Fourteenth Amendment's incorporation of the Bill of Rights, the U. S. Supreme Court has been constantly vigilant and protective of these rights.

> The objectionable quality of vagueness and overbreadth does not depend upon absence of fair notice to a criminally accused or upon unchanneled delegation of legislative powers, but upon the danger of tolerating, in the area of First Amendment freedoms, the existence of a penal statute, susceptible of sweeping and improper application. *NAACP v. Button,* 371 U.S. 415, 432-3, 83 S.Ct. 328, 9 L.Ed. 405 (1963).

The overbroadness and vagueness already discussed are compounded by the provision that the U.F.W. is bound by the acts of its agents and whether or not the acts so performed "were actually authorized or subsequently ratified shall not be controlling." A.R.S. § 23-1393(F). Since the Act restricts the U.F.W. and its agents, and provides criminal penalties for violation by any person, the U.F.W. could be subject to sanctions regardless of its relationship to the agent.

There is no way for anyone to guess whether criminal provisions will apply to any particular conduct, in advance, and it is clear that the statute is unconstitutionally vague and does not adequately define

prohibited conduct and is, therefore, in violation of the due process clause of the Fourteenth Amendment. *Whitehall v. Elkins,* 389 U.S. 54, 88 S.Ct. 184, 19 L.Ed. 2d 228 (1967); *Keyesbian v. Board of Regents,* 385 U.S. 589, 87 S.Ct. 675, 17 L.Ed.2d 629 (1967); *Elfbrandt v. Russell,* 384 U.S. 11, 86 S.Ct. 1238, 16 L.Ed. 2d 321 (1966); *NAACP v. Alabama,* 357 U.S. 449, 78 S.Ct. 1163, 2 L.Ed. 2d 1488 (1958); *Conally v. General Construction Co.,* 269 U.S. 385, 46 S.Ct. 126, 70 L.Ed. 322 (1926).

Recently the U. S. Supreme Court considered the case or controversy issue in the context of a challenge to a criminal statute. In *Doe v. Bolton,* 410 U.S. 179, 93 S.Ct. 739, 35 L.Ed. 2d 201 (1973), the Supreme Court addressed the question whether a licensed physician's challenge to a Georgia anti-abortion statute presented a justiciable controversy. In that case, there was no record of a pending or threatened criminal prosecution and the Act had not been enforced against the plaintiffs. Still the court found a controversy did exist and reversed the lower court's dismissal saying:

> The physician is one against whom these criminal statutes directly operate in the event he procures an abortion that does not meet the statutory options and conditions. The physicians-appellants, therefore, assert a sufficiently direct threat of personal detriment. They should not be required to await and undergo criminal prosecution as the sole means of seeking relief. *Crossen v. Breckenbridge,* 446 F.2d 833, 839, 839-840 (6th Cir. 1971); *Poe v. Menghini,* 339 F.Supp. 986, 990-991 (Kan. 1972).

Throughout their arguments the intervenors and defendants have argued that there is no case or controversy here since no criminal prosecution has been commenced against the plaintiffs.

At the same time, as their memorandum reveals, they are also aware that were there pending criminal cases against the plaintiffs under AERA, this Court would hesitate to take jurisdiction for reasons of equity, comity, and federalism.

Yet courts have found case or controversies when criminal statutes were challenged as overbroad even before the acts went into effect or there had been any enforcement. *Wounded Knee Legal Defense/Offense Committee v. F.B.I.,* 507 F.2d 1281 (8th Cir. 1974); *Brown v. Brannon,* 399 F.Supp. 133, aff'd 535 F.2d 7249 (4th Cir. 1975); *Hjelle v. Brooks,* 377 F.Supp. 430 (D.Alas. 1974); *Stoner v. Miller,* 377 F.Supp. 177 (E.D.N.Y. 1974); *Associated Students, University of California at Riverside v. Attorney General of the United States,* 368 F.Supp. 11 (C.D. Cal. 1973); *Valley Health Systems v. City of Racine,* 369 F.Supp. 97 (E.D. Wisc. 1973); *Mortillaro v. State of Louisiana,* 356 F.Supp. 521 (E.D. La. 1972).

The significance of these cases is clear; that is, if plaintiffs are persons against whom the particular criminal statute directly operates, and whether they assert a sufficiently direct threat of personal detriment.

There can be no question that the plaintiffs in the present lawsuit are precisely those persons and organizations whose activity the penal statute was designed to regulate, and they have asserted a direct threat of

personal detriment both through its past enforcement as well as the threat of its continued enforcement.

It is true that A.R.S. § 23-1392 of the AERA relating to penalties is severable, and that if so severed and declared invalid, the rest of the Act could stand as it is not dependant for its operation upon this section. However, it is sufficient in and of itself as being unconstitutionally invalid and void on its face to give this Court jurisdiction and create a case or controversy.

If the plaintiffs are correct in their contentions that many provisions of the AERA are unconstitutional and void on their face, then a substantial federal question exists as to the constitutional rights that are infringed upon by the AERA and this Court would have jurisdiction. However, if defendants maintain that any sections of the Act found to be unconstitutional are severable, then the remainder of the Act could stand as operable law.

Where it is not possible to separate that part of a law which is unconstitutional from the rest of the law, the whole law fails. *Lynch v. U.S.*, 292 U.S. 571, 54 S.Ct. 840, 78 L.Ed. 1434 (1934); *Hill v. Wallace*, 259 U.S. 44, 42 S.Ct. 453, 66 L.Ed. 822 (1922); *Harrison v. St. Louis & S.F.R. Co.*, 232 U.S. 318, 34 S.Ct. 333, 58 L.Ed. 621 (1914); *Gherma v. State*, 16 Ariz. 344, 146 P. 494 (1915).

A law is void on its face if it does not aim specifically at evils within the allowable area of governmental control, but sweeps within its ambit other activities that constitute an exercise of protected expressive or associated rights. (see: "The First Amendment Overbreadth Doctrine" 83 Harv. L. Rev. 844 (1970).)

A plausible challenge to a law as void for overbreadth can thus be made when (1) the protective activity is a significant part of the law's target, and (2) there exists no satisfactory way of severing the law's constitutional from its unconstitutional applications so as to excise the latter clearly in a simple step from the law's reach.

In laws having these two characteristics, the usual approach of constitutional adjudication — gradually cutting away the unconstitutional aspects of a statute by invalidating its improper applications case by case — does not respond sufficiently to the peculiar vulnerable character of activities protected by the first amendment. For an "overbroad" law of the sort described here "hangs over [people's] heads like a Sword of Damocles." *Arnett v. Kennedy*, 416 U.S. 134, 231, 94 S.Ct. 1633, 40 L.Ed. 2d 15 (1974). That judges will ultimately rescue those whose conduct in retrospect is held protected is not enough, "for the value of a Sword of Damocles is that it hangs — not that it drops." The resulting deterrent to protected speech is not effectively removed if "the contours of regulation would have to be hammered out case-by-case and tested only by those hardy enough to risk criminal prosecution [or other sanctions] to determine the proper scope of regulation. *Dombrowski v. Pfister*, 380 U.S. 479, 487, 85 S.Ct. 1116, 14 L.Ed. 2d 22 (1965). The only solution, then, is to strike down such an overbroad law altogether. . . . This result may be understood as an exception to the rule that individuals are not ordinarily permitted to litigate the rights of third parties, since an individual whose conduct may not itself be protected by the first

amendment is awarded a judicial victory on the claim of a law's potential unconstitutional applications to the conduct of persons not before the court. *American Constitutional Law,* Laurence H. Tribe, The Foundation Press, 1978.

CONCLUSIONS OF LAW

After consideration of the many-pronged attack made by plaintiffs on the constitutionality of the various provisions of the AERA, and the defendants' response thereto, this Court finds and concludes that the Agricultural Employment Relations Act, A.R.S. §§ 23-1381, et sequence, is unconstitutional in its entirety for the reason that A.R.S. §§ 23-*1385(B)(8)*, 23-*1392*, 23-*1393(B)(1)* are unconstitutional and void on their face, and A.R.S. §§ 23-*1385(C)* and 23-*1389* are likewise unconstitutional when considered in context with the testimony and other evidence presented, and these sections are found to be in violation of the First and Fourteenth Amendments to the Constitution of the United States and in violation of the freedom of speech and assembly provisions and of the due process and equal protection clauses with A.R.S. § 23-1393(B) also found to be in violation of the Seventh Amendment providing for right to trial by jury and with the rest of the Act falling by reason of its inseparability and inoperability apart from the provisions found to be invalid.

FINDINGS OF FACT

Turning now to the facts found by this Court to be pertinent to a consideration of the constitutionality of A.R.S. §§ 23-1385(C) and 23-1389.

The majority of agricultural employees as defined by the AERA are directly engaged in the planting, preparation and/or harvesting of row crops, field crops, tree fruits, and grapes. The greatest number of field workers employed by an agricultural employer are employed during the peak of the harvest season. This peak period is that time when fifty percent or more of the highest number of agricultural employees employed at any time during the harvest season are employed.

Most of the agricultural employees in Arizona, about seventy-five to eighty percent of the total man-days worked each year, are employed in the growing and harvesting seasonal fruits and vegetables. Major crops in this category include lettuce (approximately twenty percent), citrus (approximately twenty-two percent), grapes and deciduous trees (approximately five to ten percent), vegetables, other than lettuce, including green onions, dry onions, carrots, cauliflower, broccoli, cabbage, etc. (approximately twenty percent), and cantaloupes (approximately five to ten percent).

The length of the harvest season and times of peak employment are for the most part very short. The great majority of the lettuce crop in Arizona is harvested in separate spring and fall harvests. The length of these harvest seasons for any particular employer ranges from four to six weeks within which there is a period of peak employment of only three to four weeks.

The grape harvest occurs once annually and lasts from four to six weeks with a period of peak employment of three to four weeks.

Cantaloupes are harvested in from three to seven weeks with a peak of only two to three weeks while the dry onion harvest for any single agricultural employer usually takes about two to four weeks.

The citrus harvest in Arizona lasts for ten to eleven months, approximately from September to mid-July. Green onions may be harvested for as long as ten months of the year. Even in these latter crops, citrus and green onions, there are factors which make the period of employment of particular workers for a specific employer considerably shorter than the length of the total harvest. Employers do not always have each successive crop ready for harvest at the end of the harvesting of the preceding crops. Therefore, the work is intermittent and employees often must switch employers. Many of the workers are migratory who must leave an area immediately after a harvest to find other employment. Many employees do not return to the same employer in a following year so that each year there is a substantial change in the work force.

Green onions also involve an industry where there is tremendous turnover because workers are paid on a daily cash basis and because many minors are employed.

In citrus, crews are constantly moved from employer to employer throughout the harvest season picking only intermittently for any particular employer for from a few days to a few weeks.

If an election is to be held so that a majority of employees of a particular grower can participate, such an election must be held during the period of peak employment. To accomplish this, the law should assure that an election can be petitioned for during such peak periods, and that the procedures for holding elections does [sic] not extend in time beyond the period of peak employment.

Any labor organization seeking to organize Arizona agricultural workers employed in these industries must by reason of provisions of the AERA relating to the representation and election provisions of the AERA, and because of the very nature of the organizational process based on previous experience with analogous statutes, e.g., National Labor Relations Act and the California Agricultural Labor Relations Act, take certain periods of time to accomplish certain organizational goals.

For example, it takes approximately three to six weeks for a union to gather authorization cards to be submitted with a petition for a representation election. Activities which must be carried out by the union during this time include locating all the various fields of an employer, identifying his employees, contacting those employees, and informing and persuading them to sign authorization cards. This cannot be done until the harvest season has begun since there is a substantial turnover in employees from year to year and it is impossible to determine who will work for an employer until that person is actually found in the field. Also to

protect employees from possible employer retaliations, organizing must be done at a time relatively near the election.

It is usually within an employer's power to delay the process of obtaining sufficient authorizations by employing coercive tactics to discourage union activities among his employees.

Much of the work of reaching agricultural employees must be done on the employer's property, since most agricultural employees are migrants with no permanent residence in the area and live in labor camps on the employer's premises.

The election procedures of the AERA are virtually identical to those of the National Labor Relations Act which, in a contested election, requires from six to seven weeks for completion.

The election provisions of the AERA call for a Board investigation of the petition, the setting and holding of a pre-election hearing upon the demand of the employer, decision of issues raised at the hearing, and granting the employer ten days to provide a list of employees to the Board and the union.

The experience of the plaintiff U.F.W. in participating in over 400 elections in California in the agricultural industry was that it took from three to six weeks before petitions could be filed. Under NLRB experience the hearing is not held until from fourteen to twenty-one days after the petition is filed.

The six to seven week period between the filing of a petition and the holding of an election will be longer than many of the seasons of peak employment. When this period is added to the three to six weeks of work

which must be done before a petition can be filed, the entire process cannot take place before the majority of the employees finish their work and leave their place of employment.

Experience under both the N.L.R.A. and in California employer-employee situations in the agricultural industry, has shown that some employers do utilize such coercive and intimidating tactics during elections that both the NLRB and the California Board have found that even after remedial action for unfair labor practices, it was impossible to hold a fair, uncoerced election.

In such situations it has been determined that the only way to preserve the employees' right to collective bargaining was to issue orders to bargain to the employer, absent an actual certification through a secret ballot election.

Absent such power to issue such bargaining orders, the Board, acting pursuant to the AERA, would be without adequate remedy to protect employee rights to collective bargaining. Since the AERA prohibits the Arizona Board from issuing such an order requiring an employer to bargain with a union, unless that union is certified through an election, the AERA encourages employers to commit those types of unfair labor practices which result in election coercion and in turn to a "no-union" vote. Such a practice could be engaged in year after year, effectively delaying any bargaining.

REPRESENTATION AND ELECTION PROCEDURES

Having stated these facts, our consideration turns naturally to that provision of the Act most important to a consideration of its constitutionality. This is A.R.S. § 23-1389 (employee representation, recognition, and election procedures). For a full analysis of this point as well as an exhaustive analysis of the AERA, see: "State Regulation of Agricultural Labor Relations — The Arizona Farm Labor Law — an Interpretive and Comparative Analysis." Warren H. Cohen, Jonathan Rose. Law and the Social Order, 1973, p. 313 through 431, at 322.

The stated legislative purpose of the Act as enunciated in its "Declaration of Policy," A.R.S. § 23-1381, is said to be:

> . . . the policy of this state that agricultural employees shall be free to organize, to take concerted action, and through representatives of their own choosing enter into collective bargaining contracts establishing their wages and terms and conditions of employment; . . ."

Such a stated policy is but a recognition of the First Amendment right to free speech, to assemble peaceably, and the due process right of all in America who desire to do so to participate and retain membership in a union. *Griswold v. Connecticut*, 381 U.S. 479, 85 S.Ct. 1678, 14 L.Ed.2d 510 (1965); *N.A.A.C.P. v. Alabama, ex rel. Paterson*, 357 U.S. 449, 78 S.Ct. 1163, 2 L.Ed. 2d 1488 (1958); *Hagne v. CIO*, 307 U.S. 496, 59 S.Ct. 954, 83 L.Ed. 1414 (1939); *NLRB v. Jones and McLaughlin Steel Corp.*, 301 U.S. 1, 57 S.Ct. 615, 81 L.Ed 893 (1937); *Lontine, et al., v. Van Cleave*, 483

F.2d 966 (10th Cir. 1973); *American Federation of State, County & Municipal Employees v. Woodward*, 406 F.2d 137 (8th Cir. 1969); *McLaughlin v. Tilendis*, 398 F.2d 287 (7th Cir. 1968); *Thomas v. Collins*, 323 U.S. 516, 65 S.Ct. 315, 89 L.Ed. 2d 430 (1945). See also "A Preliminary Survey of the Arizona Farm Labor Act," Robert A. Kerry, *Arizona Law Review*, Vol. 14, No. 4, p. 766 at 801.

The section in question reads as follows:

§ 23-1389. *Representatives and elections*

A. Representatives selected by a secret ballot for the purposes of collective bargaining by the majority of the agricultural employees in a unit appropriate for such purposes shall be the exclusive representatives of all the agricultural employees in such unit for the purpose of collective bargaining in respect to rates of pay, wages, hours of employment or other conditions of employment. If ratification of any such contract is required, the right to vote in such ratification shall be limited to the employees in the bargaining unit. Any individual agricultural employee or a group of agricultural employees may at any time present grievances to their agricultural employer and have such grievances adjusted, without the intervention of the bargaining representative, if the adjustment is not inconsistent with the terms of a collective bargaining contract or agreement then in effect. The bargaining representative shall be given opportunity to be present at such adjustment.

B. The board shall decide in each case whether in order to ensure to employees the fullest freedom in exercising their rights the unit appropriate for the purposes of collective bargaining shall consist of either all temporary agricultural employees or all permanent agricultural employees of an agricultural employer working at the farm where such employer grows or produces agricultural products or both. In making unit determinations the extent of a union's extent of organization shall not be controlling. Principal factors should be the community of interest between employees, same hours, duties and compensation, the administrative structure of the employer and control of labor relations policies.

C. The board shall investigate any petition, and if it has reasonable cause to believe that a question of representation exists shall provide for an appropriate hearing upon due notice, when such petition has been filed in good faith in accordance with such regulations as may be prescribed by the board:

1. By an agricultural employee or group of agricultural employees or any individual or labor organization acting in their behalf alleging that thirty per cent or more of the number of agricultural employees in the unit in question either wish to be represented for collective bargaining and that their employer declines to recognize their representative or assert that the individual or labor organization which has been certified or is being currently recognized by their employer as the bargaining representative is no longer a representative.

2. By an agricultural employer alleging that one or more individuals or labor organizations have presented to him a claim to be recognized as the representative or that an individual or labor organization which has previously been certified as the bargaining representative is no longer a representative.

D. If the board finds upon the record of such hearing that a question of representation exists, it shall direct an election by secret ballot and shall certify the results thereof. If a second labor organization files a petition for an election alleging that thirty per cent or more of the employees in the unit in question desire to be represented by that labor organization, then the board shall require that the names of both labor organizations shall appear on the ballot. In any election the voters shall be afforded the choice of "no union". If in a representational election where more than one union is on the ballot, and none of the choices receives a majority vote, a second election shall be held. The second election shall be between the union receiving the highest number of votes and "no union". In any election a labor organization shall obtain a majority of all votes cast in that election in order to be certified as the bargaining representative of all the employees in that unit.

E. In determining whether or not a question of representation exists, the same regulations and rules of decision shall apply irrespective of the identity of the persons filing the petition or the kind of relief sought. In no case shall the board deny a labor organization a place on the ballot by reason of an

order with respect to such labor organization or its predecessor not issued in conformity with § 23-1390.

F. Within five days of receipt of such a petition, the agricultural employer may file a challenge to such petition on the ground that the authorization for the filing of such petition is not current or that such authorization has been obtained by fraud, misrepresentation or coercion. Such petition shall not act to stay the election proceeding but if it is thereafter determined that the authorizations are not current or obtained by fraud, misrepresentation or coercion the petition will be dismissed.

G. No election shall be directed or conducted in any bargaining unit or any subdivision thereof within which, in the preceding twelve-month period, a valid election shall have been held. Employees engaged in an economic strike who are not entitled to reinstatement shall be eligible to vote under such regulations as the board shall find are consistent with the purposes and provisions of this article in any election conducted within three months after the commencement of the strike. Any agricultural employee who is found to have sought or accepted employment only for the purpose of affecting the outcome of an election shall not be eligible to vote in an election conducted pursuant to the provisions of this article for a period of twelve months from the date of that election.

H. Nothing in this section shall be construed to prohibit the waiving of hearings by stipulation for the purpose of a consent election in conformity with regulations and rules of decision of the board.

I. The agricultural employer, within ten days after an election is directed by the board or a consent election agreement is approved by the board and on request of the board, shall furnish to the board a list of agricultural employees in the bargaining unit who are qualified to vote, and such a list shall be made available to the organizations or other interested employees involved in the election.

J. Upon the filing with the board, by thirty per cent or more of the agricultural employees in a bargaining unit covered by a certification or by an agreement between their employer and a labor organization made pursuant to § 23-1385, of a petition alleging the desire that such representation authority be rescinded, the board shall conduct an election by secret ballot of the employees in such unit and certify the results thereof to the labor organization and to the employer.

This section of the AERA is the threshold over which employees must pass if they desire to exercise their constitutional right to " . . . organize . . . take concerted action . . . through representatives of their own choosing. . . ."

If this section fails, the rest of the Act must fail, since most of the use of the Act would apply only if farm workers were initially free to organize and not if the exercise of such a constitutional freedom of assembly were made impossible.

Essentially, this provision of the Act must be found constitutionally invalid as being in violation of the First and Fourteenth Amendments to the Constitution, because of the excessive length of the procedures permitting delays of unit representation elections coupled with the seasonal nature of agricultural labor.

The constant flux of workers to job sites, the broken routines, the mobility and interchange with different employers, and the short span of working periods during peak employment periods when the majority of workers in a proposed unit are employed by a grower, make it impossible for the Agricultural Employment Relations Board to conduct a timely election to effect the purpsoes of the Act.

Representation and recognition by the union, and the requirement that an employer bargain with the union, can only be achieved if the union is chosen to represent the employees through the election procedures set out in the A.R.S. § 23-1385(A)(5). Before an election can be held, the union must first demand and be denied recognition by the employer. A.R.S. § 23-1389(C)(1). There is no time set out in the law within which the employer must answer this request.

If the employer does not petition for an election, and denies a request for recognition, then the union must petition for an election showing that at least thirty percent of the employees in the unit wish to be

represented by the union. A.R.S. § 23-1389(C)(1). If the AERA Board has reasonable cause to believe that a sufficient number of workers desire to have a union to represent them to justify an election, it will set a pre-election hearing. Again no time period is provided in the Act for how soon the Board must act. Since time for such notice is not provided, the general application of the Arizona Administrative Procedure Act stamps a twenty day period (A.R.S. § 41-1009) on how soon the hearing will be held.

If at the hearing, the Board determines there is a question of representation, it will direct an election by secret ballot. Again there is no provision setting the time within which the election must be held.

Once the Board has fixed the time for a union election, the employer has ten days to submit to the Board a list of his employees eligible to vote. A.R.S. § 23-1389(I). Then the election must be by secret ballot. If the union wins a majority of the votes cast, it will be certified by the Board as the representative for that unit and the employer will be required to bargain collectively with the union. § 23-1385(A)(5); see also § 23-1385(D).

The Board is directed by the AERA to form the unit from either all "permanent" employees, all "temporary" employees or both. A.R.S. § 23-1389(B). Permanent employees are defined as those "over sixteen years of age who . . . [have] . . . been employed by a particular agricultural employer for at least six months during the preceding calendar year." A.R.S. § 23-1382(1).

The Board is also directed to form the bargaining unit from employees "working at the farm." A worker could thus be a "permanent" employee but still be excluded from voting because while having worked for the employer for at "least six months during the preceding calendar year," he was not employed at the time of the election (and we take calendar year to have it plain meaning of being a year extending from January through December so that this provision clearly means that a worker must have been employed during the twelve months preceding January 1 of the year in which the election is held).

A temporary employee is defined as "over sixteen years of age . . . employed by a particular agricultural employer and who has been so employed during the preceding calendar year." A.R.S. § 23-1382(1).

Again, a worker not currently employed even though he worked the previous calendar year for the employer could not vote.

In any event, it is also clear from these provisions that many other migratory workers could not vote, even though presently employed, simply because they had not worked for the employer in a particular unit, either for six months or at any time during the preceding calendar year — the practical effect being that a particular worker must be employed during two successsive harvests before being entitled to vote.

These categories of employees eligible to vote set forth in the Act, would appear to be so defined as to preclude a significant and substantial number from participating in the collective bargaining process, from selecting representatives of their own choosing, given

the migratory and transitory nature of agricultural employment.

A second and most significant consequence of determing the unit solely on the basis of the eligible employees as defined by the Act, is that an election in any unit will be a bar to another election for twelve months. A.R.S. § 23-1389(G).

Groups of workers may thus be hired for the same unit at different times of the year, and yet an election among one group will bar an election by a group hired later in the year. An employer could, for example, respond to a petiton for an election filed by a small minority of his permanent, year-round employees, and if they should vote for no-union, then no matter how many hundreds of thousands of employees that employer hires for that unit, thereafter they are barred from holding another election for twelve months — clearly an absolute frustration of their right of free association.

Defendants have argued that even if an election were held before or after the peak period, the plaintiff union could object on the grounds that a non-representative electorate selected the collective bargaining representative. But here again, as if in anticipation of this kind of reaction, A.R.S. § 23-1385(B)(12) prohibits picketing or boycotting "(b) Where within the preceding twelve months a valid election under § 23-1389 has been conducted." or "(c) Where a petition has been filed under § 23-1389."

As noted in the earlier findings, another difficulty arising out of a procedure which makes an election (aside from dubious consent by an employer) the sole procedure for establishing union recognition and representation is that the ballot procedure is subject to disruption by the employer and thus could effectively frustrate any such recognition or representation ever being achieved.

This problem has been well recognized by the courts, and where an election is not a feasible alternative, the NLRA and the courts have recognized the validity of informal methods of designating a union for ordering collective bargaining and an essential method of preserving the rights of employees. *Linden Lumber Division v. UNLRB,* 419 U.S. 301, 95 S.Ct. 429, 42 L.Ed. 2d 465 (1974); *N.L.R.B. v. Gessel* [*sic*] *Packing Co.,* 395 U.S. 575, 89 S.Ct. 1918, 23 L.Ed. 2d 547 (1969); *Bishop v. NLRB,* 502 F.2d 1024 (5th Cir. 1974); *NLRB v. Big Three Industires,* 497 F.2d 43 (5th Cir. 1974); *NLRB v. Kaiser Agr. Chem. Div. of Kaiser A & C Corp.,* 473 F.2d 374 (5th Cir. 1973); *J. P. Stevens & Co., Inc., Gubistan Division v. NLRB,* 441 F.2d 514 (5th Cir. 1971); *NLRB v. Drives Inc.,* 440 F.2d 354 (7th Cir. 1971).

The Ninth Circuit, in following *NLRB v. Gessel* [*sic*] *Packing Co., supra,* noted that without ultimate authority to order collective bargaining regardless of election results, the statutory procedures themselves become an aid to an employer's attempt to prevent unionization. *NLRB v. L.B. Forster Co.,* 418 F.2d 1 (9th Cir. 1969).

Thus the absence in the AERA of any feasible alternative to a secret ballot election is in effect a condonation and an encouragement to intentional interference by the employer in the election process which could effectively prevent any meaningful election from ever being held, again frustrating the right to free assembly and association.

We next consider additional bases for conferring jurisdiction upon this Court, namely, whether there is any other section or sections of the AERA that are constitutionally invalid on their face so that there is a further substantial federal question presented.

We find this to be true of three sections: A.R.S. § 23-1385(B)(8), A.R.S. § 23-1385(C), and A.R.S. § 23-1393(B).

CONSUMER PUBLICITY

The first deals with consumer publicity and reads in pertinent part:

§ 23-1385. *Unfair labor practices.*

B. It shall be an unfair labor practice for a labor organization or its agents:

8. To induce or encourage the ultimate consumer of any agricultural product to refrain from purchasing, consuming or using such agricultural product by the use of dishonest, untruthful and deceptive publicity. Permissible inducement or encouragement within the meaning of this section means truthful, honest and non-deceptive publicity which identifies the agricultural product produced by an agricultural employer with whom the labor organization has a primary dispute. Permissible inducement or encouragement does

> not include publicity directed against any trademark trade name or generic name which may include agricultural products of another producer or user of such trademark, trade name or generic name.

This provision of the AERA deals specifically with "truthful, honest and undeceptive publicity" and says if publicity is not of this character, it is an unfair labor practice. This section is no doubt intended to prohibit what is commonly referred to as consumer boycotts to be achieved by handbilling, picketing, orally, and other mediums of communication customarily employed by labor organizations.

First, it specifically prohibits inducing or encouraging an ultimate consumer to refrain from purchasing particular agricultural products "by the use of dishonest, untruthful and deceptive publicity." This section goes on to define permissible inducement "as truthful, honest, and nondeceptive publicity which indentifies the agricultural product produced by an agricultural employer with whom the labor organization has a primary dispute."

Plaintiff argues (1) that the section unconstitutionally restricts speech activity because it makes all but truthful, honest, and nondeceptive publicity an unfair labor practice, and subjects a person or organization guilty of such practice to criminal penalties for violation where determination of "truth" is left to be decided by a tribunal after the utterance and thus creates a drill [sic] on the exercise of First Amendment rights, and that (2) the section's limitation on inducement by a union to products produced by the agricultural employer with whom the union has a primary dispute restricts unconstitutionally the right of nonemployees to communicate.

As to the first requisite, the U.S. Supreme Court has held on many occasions that truthfulness is not a prerequisite to First Amendment protection.

In *Organization for a Better Austin v. Keefe,* 402 U.S. 415, 91 S.Ct. 1575, 29 L.Ed. 2d 1 (1971), the court said:

> It is elementary of course that in a case of this kind the courts do not concern themselves with the truth or validity of the publication. *Under Near v. Minnesota,* 283 U.S. 697, the injunction, so far as it poses a prior restraint on speech and publication constitutes an impermissible restraint on first amendment rights.

Again in *N. Y. Times v. Sullivan,* 376 U.S. 254, 84 S.Ct. 710, 11 L.Ed. 2d 686 (1964), the court also indicated that First Amendment protections apply to other than just truthful statements.

> Authoritative interpretations of the First Amendment guarantees have consistently refused to recognize an exception for any test of truth — whether administered by judges, juries or administrative officials — and especially one that puts the burden on proving the truth to the speaker. *Cf. Speiser v. Randall,* 357 U.S. 513, 78 S.Ct. 1332, 525-26, 2 L.Ed. 2d 1460, 1472 (1958). The constitutional protection does not turn upon the "truth, popularity, or social utility of the ideas and beliefs which are offered." *NAACP v. Button,* 371 U.S. 415, 445, 83 S.Ct. 328, 9 L.Ed. 2d 405 (1963).

That erroneous statement is inevitable in free debate and that it must be protected if the freedoms of expression are to have the "breathing space" that they "need to survive" (citing case) was also recognized by the Court of Appeals for the District of Columbia Circuit in *Sweeney v. Paterson,* 76 U.S. App. D.C. 23, 24, 128 F.2d 457, 458, cert. denied 317 U.S. 678, 63 S.Ct. 160, 87 L.Ed. 544 (1942).

See also *Vanesco v. Schwartz,* 401 F.Supp. 87 (D.C.N.Y. 1975), aff'd without opinion 423 U.S 1041, 96 S.Ct. 763 (1976). The court in *Vanesco* held that a statute prohibiting "deliberate misrepresentations" and regulations prohibiting "misrepresentations" in political campaigns, which on the face of the statute were not based on a finding of actual malice, was an overbroad infringement upon First Amendment rights and was unconstitutional on its face.

The statute here involved likewise contains no intent requirement, and in fact is even broader since it is not limited to "deliberate" misrepresentation.

Although defendants, as to this particular provision and with so many others, are always proposing the narrowest interpretation possible, and suggesting that this is the way that this, and many other provisions, should be interpreted to save constitutionality of a statute, yet, as has been said, where First Amendment rights are involved, this prohibition in this section of the statute involving as it does a prior restraint on free speech, must be narrowly drawn, and the speaker should not be "chilled" by the potential that some interpretation of his expression concerning which he has no knowledge may make his statement "untruthful." *Gooding v. Wilson,* 405 U.S. 518, 92 S.Ct. 1003, 31

L.Ed. 408 (1972); *Pickering v. Board of Education,* 391 U.S. 563, 573-74, 88 S.Ct. 1731, 20 L.Ed. 2d 811 (1968); *Garrison v. Louisiana,* 379 U.S. 64, 85 S.Ct. 209, 13 L.Ed. 2d 125 (1964); *NAACP v. Button,* 371 U.S. 415, 433, 83 S.Ct. 328, 9 L.Ed. 2d 405 (1963) *Cafeteria Workers Local 302 v. Angelos,* 320 U.S. 293, 295, 64 S.Ct. 126, 88 L.Ed. 58 (1943); *Chaplinsky v. New Hampshire,* 315 U.S. 568, 572, 62 S.Ct. 766, 86 L.Ed. 1031 (1942); *Cantwell v. Connecticut,* 310 U.S. 296, 310, 60 S.Ct. 900, 84 L.Ed. 1213 (1940).

The next questionable part of this section, namely, A.R.S. § 23-1385(B)(8), is that which limits consumer picketing by the union solely to situtations in which the union has a primary dispute with a particular grower and the picket signs must identify that grower. However, if that particular grower with whom the union has a primary dispute sells to a trade association which utilizes a trade name on the products sold which include the particular grower's product, the union is forbidden in its consumer picketing from referring to that trade name.

Defendants argue that this language is necessary to protect a grower not involved in a dispute with the union who happens to deal in the same product bearing the same trade name, as the grower with whom the union does have a dispute.

However, it must be noted that A.R.S. § 23-1382.6 is the only definition of "dispute," and it is there defined as " . . . any controversy between an agricultural employer and his agricultural employees . . . ." Construing A.R.S. § 1385(B)(8) in light of A.R.S. § 23-1382.6 means that a labor organization is permitted to conduct picketing against a particular employer only if

that employer's employees have a controversy over terms and conditions of employment.

In *AFL v. Swing*, 312 U.S. 321, 61 S.Ct. 568, 85 L.Ed. 855 (1941), the Illinois Supreme Court had enjoined picketing by a labor union on the ground that there was no dispute between the employer and his immediate employees. The United States Supreme Court reversed, however, holding that an injunction was inconsistent with "the right to free discussion" and therefore unconstitutional. It follows that if a primary dispute is not required for primary picketing, it cannot be made a requirement for secondary picketing. The same "right to free discussion" is abridged, and it is not outweighed by the State's interest in protecting the secondary employer since the existence of a primary dispute has no relation to whether the secondary employer is being subjected to economic coercion. See also: *Baldwin v. Arizona Flame Restraurant*, 82 Ariz. 385, 313 P.2d 759 (1957), where the Arizona Supreme Court held unconstitutional A.R.S. § 23-1322 which required a "bona fide dispute regarding wages and working conditions" between an employer and a majority of his employees as a prerequisite to lawful picketing. See also: *NLRB v. Fruit Packers Local 760*, 377 U.S. 58, 84 S.Ct. 1063, 12 L.Ed. 2d 129 (1964).

This section of A.R.S. § 23-1385(B)(8) therefore is invalid on its face as a violation of the free speech provison of the First Amendment to the Constitution.

ACCESS BY UNION REPRESENTATIVES

Turning next to a consideration of § 23-1385(C) which in pertinent part reads as follows:

> C. . . . No employer shall be required to furnish or make available to a labor organization, and no labor organization shall be required to furnish or make available to an employer, materials, information *time*, or *facilities* (emphasis added) to enable such employer or labor organization, as the case may be, to communicate with employees of the employer, members of the labor organization, its supporters, or adherents.

This provision clearly states that an employer of migrant farm workers does not have to provide a time or place when and where the union can communicate with his workers, and it also means that the employer does not have to allow the union to come upon his property. The provision provides a positive tool for a grower employer to keep any one and everyone away from his property.

Given the fact, as shown by testimony and other evidence and really not disputed by defendants that the vast majority of farm workers are migratory and generally reside in areas or labor camps located on property owned by the employer, this section must fall because it constitutes an unconstitutional restriction on the First Amendment exercise of free speech because of private property interests.

Even defendants agree that there must be an accommodation between organizational rights and property rights by citing *Central Hardware Co. v. NLRB*, 407 U.S. 539, 92 S.Ct. 2238, 33 L.Ed. 2d 122 (1972), but no such accommodation is permitted by this section of the statute.

Beginning with *Marsh v. Alabama*, 326 U.S. 501, 66 S.Ct. 276, 90 L.Ed. 265 (1946), which held that ownership of property didn't always mean absolute domain and that private property was *not* per se immune from a constitutional protection of people on or entering upon property, the courts continued to assert this same principle.

In *Peterson v. Talisman Sugar Co.*, 478 F.2d 73 (5th Cir. 1973), the court found that a labor camp was more analagous to the traditional "company town" than shopping centers discussed in *Amalgamated Food Employees Union v. Logan Valley Plaza*, 391 U.S. 308, 88 S.Ct. 1601, 20 L.Ed. 2d 603 (1971); *Hudgens v. NLRB*, 424 U.S. 507, 96 S.Ct. 1029, 47 L.Ed. 2d 196 (1976); and *Lloyd Corp. v. Tanner*, 407 U.S. 551, 92 S.Ct. 2219, 33 L.Ed. 2d 131 (1971) relied upon by defendants.

In the latter cases, the Supreme Court upheld restrictions on exercise of First Amendment rights because of private property interests.

In the company town situation, pertinent to the facts of this case, the court in *Marsh v. Alabama, supra*, found that there was nothing in the company town, except for mere title in a corporation, which would justify treating it differently from any other municipal center.

The court in *Peterson v. Talisman Sugar Co., supra*, went on to hold that a labor camp was a functional equivalent of a municipality and the company had to accommodate its property rights to the extent necessary to allow the free flow of ideas and information between the union and the migrant workers. See also:

Illinois Migrant Council v. Campbell Soup Co., 478 F.2d 73, 82-83 (5th Cir. 1973); *United Farm Workers Union, AFL-CIO v. Mel Finerman Co.*, 364 F.Supp. 326 (D.Colo. 1973); *Francheschina v. Morgan*, 346 F.Supp. 833 (S.D. Ind. 1972); *Folgueras v. Hassle*, 331 F.Supp. 615 (W.D. Mich. 1971); "First Amendment and the Problems of Access to Migrant Labor Camps After Lloyd Corporation v. Tanner," 61 Cornell L.Rev. 560 (1976).

Defendants argue that this section makes no reference to and does not restrict the rights of employees to communicate with other employees during non-work time in non-work areas, and that the section restricts only labor organizations. They say this section doesn't deny access, it just says that the employer doesn't have to furnish facilities and the union "is not prohibited, in the exercise of free speech, from going into non-work areas on the property at reasonable times for legitimate, peaceful purposes."

However, as to alternative means of communciation, A.R.S. § 23-1389(I) provides that an employer need only provide a list of names of the people working for him, and this, taken in conjunction with A.R.S. § 23-1385(C)'s provision which states that no employer shall be required to furnish or make available information to enable a union to communicate with employees, effectively deprives the union of any alternative form of communication due to the migrant nature of the workers.

Defendants also attempt to make a distinction between "furnishing" and "denying access." They seem to argue that these are always two separate acts, one an affirmative and the other negative, and that the Act

only applies to one, namely "furnishing." In fact they would appear to be the same activity. If the grower doesn't have to "furnish facilities" that clearly means he doesn't have to provide a time or place when the union can communicate with his workers, and thus also means that he does not have to allow them to come onto his property.

Defendants also seek to distinguish between employee and non-employee union organizers, contending that the former has rights of access while the latter does not. Aside from the dubious value of this distinction in constitutional terms, the words of the statute are not so limited and an employee who is a union organizer is considered under normal agency principles to be an agent of the union, and the employer would not be under any obligation to allow time or facilities for him either.

In brief then, an employer does not have to grant access to facilities which he does not have to furnish.

Given the clearly established rights of communication and organization, this section of A.R.S. § 23-1385(C) is constitutionally defective because it prohibits too broad a scope of activity, both protected and unprotected, involving freedom of association and speech.

COURT JURISDICTION

We turn finally to A.R.S. § 23-1393(B) which in pertinent part reads:

§ 23-1393. *Court jurisdiction*

. . .

B. In the case of a strike or boycott, or threat of a strike or boycott, against an agricultural employer, the court may grant, and upon proper application shall grant as provided in this section a ten-day restraining order enjoining such a strike or boycott, provided that if an agricultural employer invokes the court's jurisdiction to issue the ten-day restraining order to enjoin a strike as provided by this subsection, said employer must as a condition thereto agree to submit the dispute to binding arbitration as the means of settling the unresolved issues. In the event the parties cannot agree on an arbitrator within two days after the court awards a restraining order, the court shall appoint one to decide the unresolved issues. Any agricultural employer shall be entitled to injunctive relief accorded by Rule 65 of the Arizona Rules of Civil Procedure upon the filing of a verified petition showing that his agricultural employees are unlawfully on strike or are unlawfully conducting a boycott, or are unlawfully threatening to strike or boycott, and that the resulting cessation of work or conduct of a boycott will result in the prevention of production or the loss, spoilage, deterioration, or reduction in grade, quality or marketability of an agricultural commodity or commodities for human consumption in commercial quantities. For the purpose of this subsection, an agricultural commodity or commodities for human consumption with a market value of five thousand dollars or more shall constitute commercial quantities.

This section provides a unique remedy to the employer. On his verified petition to the Court, alleging that his employees are unlawfully on strike and alleging a prevention of production or loss or spoilage of his crop, several things happen:

1. As a condition for the order he, the employer, must "agree" to submit the issues to binding arbitration;

2. If the parties within two days after the issuance of the order cannot agree upon an arbitrator to decide the issues, the Court *"shall"* appoint one "to decide the unresolved issues."

The effect of the section is apparent, if the union should insist under the "employees' rights" section (A.R.S. § 23-1383) that they have a right to bargain concerning an issue which is contrary to that of the employer's position under the "management rights" sections (A.R.S. §§ 23-1384, 23-1385(B)(11), 23-1385(D), then any resultant strike by the union in support of their position can be unilaterally deemed "unlawful" by the employer who can, without the consent of the union, submit the dispute to binding arbitration by an outsider. The act then mandates the Court to submit the matter to a stranger and deprives the Court of further jurisdiction to hear the matter on its merits.

Such unilateral compulsory arbitration constitutes a clear denial of due process under the law for when the effect of statutes has been to coerce parties to submit to arbitration, without agreement or assent on their part to do so, the courts have declared them unconstitutional [*Dorchy v. Kansas*, 264 U.S. 286, 44 S.Ct. 323, 68 L.Ed. 686 (1924); *Chas. Wolff Packing Co. v. Court of Industrial Relations*, 262 U.S. 522, 43 S.Ct. 630, 67 L.Ed. 1103 (1923); *Graves v. Northern P. R. Co.*, 5 Mont. 556, 6 P. 16 (1885)] as depriving parties of liberty and property without due process of law, 55 A.L.R. 2d 445, 510, or as depriving parties of constitutional right to a trial by jury. *Re Smith*. 381 Pa. 223, 112 A.2d 625, app. dismissed, 350 U.S. 858, 76 S.Ct. 105, 100 L.Ed. 762 (1955).

Furthermore, under Arizona law pertaining to arbitration which contains procedures for arbitration and means of review, § 12-1517 makes such article to have "... no application to arbitration agreements between employers and employees or their respective representatives."

We therefore strike down this section of the statute, A.R.S. § 23-1393(B), as unconstitutional in violation of the due process clause of the Fourteenth Amendment to the Constitution and the Seventh Amendment providing for right to trial by jury.

CONCLUSION

To conclude, we find that the fatal flaw in the Arizona Agricultural Employment Relations Act consists of the inability of agricultural employees to organize in the first instance to exercise their right of freedom of speech and assembly, as we indicated in striking down A.R.S. § 23-1389.

This, coupled with the other sections struck down, results in a complete perversion of the expressed intent of the Legislature to allow agricultural employees to "be free to organize, take concerted action and, through representatives of their own choosing, enter into collective bargaining agreements establishing their wages and terms and conditions of employment ..."

The limitation on this right to organize is frustrated by legislated delay, the inability to communicate with employees at the employer's facilities, the unlawful proscription on free speech, the right to concerted ac-

tion in the form of a lawful strike clearly threatened by the employer's unilateral action in having the issue determined by a stranger through compulsory arbitration which in turn takes away the right to a trial by jury, and finally by the imposition of vauge and ambiguous criminal sanctions. In the light of these rulings there is obviously no need to rule on plaintiffs' other contentions including the claimed equal protection violation.

In light of the findings of this Court,

IT IS ORDERED that a permanent injunction shall issue enjoining defendants from applying or enforcing any of the provisions of A.R.S. § 23-1381, et seq.

DATED this 20th day of March, 1978.

United States Circuit Judge

United States District Judge

United States District Judge

CRAIG, D. J. concurring:

In this case I would have preferred to invoke the doctrine of abstention in order that the Supreme Court of Arizona might first express its opinion with respect to the constitutionality of a law established by the Arizona State Legislature. The majority has elected to consider the case on its merits.

I, therefore, concur in the result, although I would have used fewer words to reach it.

DATED this 19th day of April, 1978.

United States District Judge

FILED APR 20 1978
W. J. Furstenau, Clerk United States District Court For The District Of Arizona
By _____ Deputy Clerk

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA

UNITED FARM WORKERS NATIONAL UNION on behalf of itself and its members, et al.,

Plaintiffs,

vs.

BRUCE BABBITT, Governor of the State of Arizona, et al.,

Defendants,

ARIZONA FARM BUREAU FEDERATION, an Arizona corporation, et al.,

Intervenors.

NO. CIV 72-445 PHX CAM

JUDGMENT

This action came on for trial before the court, the Honorable John F. Kilkenny, Circuit Judge; the Honorable Walter E. Craig, District Judge; and the Honorable C. A. Muecke, District Judge, presiding, and the pleadings and memoranda having been considered and the issues having been duly heard and a decision having been duly rendered, and

The Court having found that the Agricultural Employment Relations Act, A.R.S. §22-1381, et sequence, is unconstitutional in its entirety for the reason that A.R.S. §§23-1385(B)(8), 23-1392, 23-1393(B)(1) are unconstitutional and void on their face, and A.R.S. §§23-1385(C) and 23-1389 are likewise unconstitutional when considered in context with the testimony and other evidence presented, and these sections having been found to be in violation of the First and Fourteenth Amendments to the Constitution of the United States and in violation of the freedom of speech and assembly provisions and of the due process and equal protection clauses with A.R.S. §23-1393(B) also found to be in violation of the Seventh Amendment providing for right to trial by jury and with the rest of the Act falling by reason of its inseparability and inoperability apart from the provisions found to be invalid,

IT IS THEREFORE ORDERED that judgment is hereby rendered in favor of plaintiffs herein in accordance with the opinion of the Court and a permanent injunction is hereby entered preventing enforcement by defendants herein of A.R.S. §§23-1381, et seq.

DATED this 19th day of April 1978.

_____
United States Circuit Judge

_____
United States District Judge

_____
United States District Judge

ARTICLE 5. AGRICULTURAL EMPLOYMENT RELATIONS

Article 5, consisting of sections 23-1381 to 23-1395, was added by Laws 1972, Ch. 137, § 1, effective August 13, 1972.

§ 23-1381. *Declaration of policy*

It is hereby declared to be the policy of this state that the uninterrupted production, packing, processing, transporting, and marketing of agricultural products is vital to the public interest. It is also declared to be the policy of this state that agricultural employees shall be free to organize, to take concerted action, and through representatives of their own choosing enter into collective bargaining contracts establishing their wages and terms and conditions of employment; or to refrain from engaging in any or all such activities. It is further declared that there now exists an inequality of bargaining power between agricultural employers and labor unions, arising out of the seasonable character and perishable nature of such agricultural products, the mobility of agricultural labor, and the fundamental differences between agriculture and industry. While the right to strike is a basic right of organized labor, such right must take into account the perishable character and the seasonal nature of agricultural products and must be limited and regulated accordingly. It is the intent of the legislature to provide a means to bargain collectively which is fair and equitable to agricultural employers, labor organizations and employees; to provide orderly election procedures to resolve questions concerning representation of agricultural employees and to declare

that certain acts are unfair labor practices which are prohibited and subject to control by the police power of this state. The overriding special interest of the state of Arizona with respect to certain secondary boycott activities originating in this state, but extending across state lines and directed at employers in other states, must be recognized, and such acts must be made unlawful and subject to control by the police power of this state.

§ 23-1382. *Definitions*

In this article, unless the context otherwise requires:

1. "Agricultural employee, permanent" means any employee over sixteen years of age who has been employed by a particular agricultural employer for at least six months during the preceding calendar year, engaged in the growing or harvesting of agricultural crops or the packing of agricultural crops where packing is accomplished in the field. "Agricultural employee, temporary" means any employee over sixteen years of age who is employed by a particular agricultural employer and who has been so employed during the preceeding calendar year, engaged in the growing or harvesting of agricultural crops or the packing of agricultural crops where packing is accomplished in the field. If otherwise qualified, a person shall be considered an agricultural employee if an agricultural employer pays the wages of the employee for work performed for the employer's benefit or on his behalf, even though the supervision of the employee, the bookkeeping, and the issuance of payroll checks is by a person other than the employer. In calculating a work day of an agricultural employee, one hour or more of employment in any one day shall be consid-

ered a work day. "Agricultural employee" also includes any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment. "Agricultural employee" does not include any individual:

(a) Employed by his parent, spouse or by an immediate relative.

(b) Having the status of an independent contractor.

(c) Employed as a supervisor or in a confidential capacity or as a clerical employee or as a guard.

(d) Employed as an executive, professional or technical employee.

(e) Who has quit or has been discharged for cause.

(f) Who is a tenant or a sharecropper and reasonably directs or shares in the management of an enterprise engaged in agriculture.

(g) Engaged in hauling or stitching functions.

2. "Agricultural employer" means any employer engaged in agriculture who employed six or more agricultural employees for a period of thirty days during the preceding six-month period, and includes any person who provides labor and services on one or more farms as an independent contractor if such person, for a period of thirty days during the preceding six-month period, employed six or more employees in such work. In calculating the number of agricultural employees employed by an agricultural employer or provided by an independent contractor, one hour or more of em-

ployment in any one day shall be considered a day of work. "Agricultural employer" also includes any employer, engaged in agriculture with less than six agricultural employees, who voluntarily elects to be subject to this article by filing a request in writing with the board.

3. "Agriculture" means all services performed on a farm as defined and described in § 23-603, including, but not limited to, the recruiting, housing and feeding of persons employed or to be employed as agricultural employees by agricultural employers.

4. "Board" means the agricultural employment relations board.

5. "Farm" means any enterprise engaged in agriculture which is operated from one headquarters where the utilization of labor and equipment is directed and which, if consisting of separate tracts of land, such tracts are located within a fifty mile radius of such headquarters.

6. "Labor dispute" means any controversy between an agricultural employer and his agricultural employees or their representative concerning terms, tenure or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing or seeking to arrange terms or conditions of employment.

7. "Labor organization" means any organization or any agency defined and described in §§ 23-1301 and 23-1321.

8. "Person" means one or more individuals, labor organizations, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy or receivers.

9. "Professional employee" means:

(a) Any employee engaged in agricultural work that:

(i) Is predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical or physical work,

(ii) Involves the consistent exercise of discretion and judgment in its performance,

(iii) Is of such character that the output produced or the result accomplished cannot be standardized in relation to a given period of time, or

(iv) Requires knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning.

(b) Any employee who has completed the course or courses of specialized intellectual instruction and study described in subdivision (a), item (iv), and is performing such work, or is performing such work or related work under the supervision of a professional person while acquiring such specialized instruction.

10. "Representative" means any individual or labor organization.

11. "Supervisor" means any individual having authority to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other employees, or responsibility to direct them, or to adjust their grievances, or effectively to recommend such action, if such authority requires the use of independent judgment.

12. "Ultimate consumer" means the person who purchases an agricultural product for consumption.

13. "Unfair labor practice" means any unfair labor practice listed in § 23-1385.

23-1383. *Rights of employees*

A. Agricultural employees shall have the right to self-organization, to bargain directly for themselves, and to form and join or assist labor organizations to bargain collectively through representatives of their own free choosing, or to engage in lawful concerted activity for the purpose of collective bargaining or other mutual aid or protection, and each such employee shall have the right, without interference from any source, to refrain from any and all of such activities.

B. Agricultural employees shall also have those rights more particularly defined and described in articles 1 and 3 of this chapter, and shall be protected from the practices described in article 4 of this chapter.

§ 23-1384. *Rights of employer*

A. An agricultural employer shall have the following management rights:

1. To manage, control and conduct his operations, including, but not limited to, the number of farms

and their locations, methods of carrying on any operation or practices thereon, kinds of crops, time of work, size and make-up of crews, assignment of work, and places of work.

2. To hire, suspend, discharge or transfer employees in accordance with his judgment of their ability.

3. To determine the type of equipment or machinery to be used, the standards and quality of work, and the wages, hours and conditions of work. The terms of employment relating to wages, hours, conditions of work, and matters of worker safety, sanitation, health and the establishment of grievance procedures directly relating to a job shall be subject to negotiation.

4. To work on his own farm in any capacity at any time.

5. To join or refuse to join any labor organization or employer organization.

§ 23-1385. *Unfair labor practices*

A. It shall be an unfair labor practice for an agricultural employer:

1. To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in § 23-1383 and articles 1 and 3 of this chapter,[1] or to violate the protection of employees from the practices described in article 4 of this chapter.[2]

2. To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it. An agricultural employer shall not be prohibited from permitting

[1]Sections 23-1381 et seq. and 23-1341 et seq.

[2]Section 23-1361.

employees to confer with him during working hours without loss of time or pay.

3. By discrimination in regard to hiring or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization.

4. To discharge or otherwise discriminate against an agricultural employee because he has filed charges or given testimony under this article.

5. To refuse to bargain collectively with the representatives of his employees, subject to the provisions of § 23-1389. Nothing in this article shall be construed as requiring an agricultural employer to bargain collectively until a representative of his agricultural employees has been determined by means of a valid secret ballot election.

6. To discharge or otherwise discriminate against any person because he has filed charges or given testimony before the board or a court.

7. To threaten to have discharged any agricultural employee, or threaten to have reduced wages of any agricultural employees, solely because of any labor activity.

B. It shall be an unfair labor practice for a labor organization or its agents:

1. To impose any economic sanction or to restrain or coerce agricultural employees in the exercise of their rights or to coerce or intimidate any employee in the enjoyment of his legal rights provided by this article, or to intimidate his family, picket his domicile or injure the person or property of any employee or his family. This paragraph shall not impair the

right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership.

2. To threaten or impose any economic sanction or reprisal against any person not a member of the labor organization in the exercise of rights under this article, including but not limited to the right to refrain from any or all concerted activity, or against any person, not a member thereof, who refrains from compliance with a union rule, policy, or practice which establishes or affects wages, hours, or working conditions at such person's place of employment.

3. To restrain, coerce, or threaten or impose any fine or other economic sanction against any person who invokes the processes of the board, or the court, or against an agricultural employer or employee in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances.

4. To refuse to bargain collectively with an agricultural employer, provided it is the majority representative of his agricultural employees as determined pursuant to § 23-1389.

5. To cause or attempt to cause an agricultural employer:

(a) To pay or deliver or agree to pay or deliver any money or other thing of value for services which are not performed or are not to be performed.

(b) To establish or alter the number of employees to be employed or the assignment thereof.

(c) To assign work to the employees of a particular employer.

(d) To discriminate in regard to hiring or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization. Nothing in this paragraph shall prohibit agreements between labor organizations and agricultural employers which regulate hiring and tenure of employment on the basis of seniority; provided further that the labor organization is not given power to determine seniority unilaterally.

6. To engage in a secondary boycott as defined in § 23-1321.

7. To induce or encourage or threaten, restrain or coerce any secondary employer or any executive or management employee of any secondary employer to make a management decision not to handle, transport, process, pack, sell or distribute any agricultural commodity of an agricultural employer with whom a labor dispute exists.

8. To induce or encourage the ultimate consumer of any agricultural product to refrain from purchasing, consuming or using such agricultural product by the use of dishonest, untruthful and deceptive publicity. Permissible inducement or encouragement within the meaning of this section means truthful, honest and nondeceptive publicity which identifies the agricultural product produced by an agricultural employer with whom the labor organization has a primary dispute. Permissible inducement or encouragement does not include publicity directed against any trademark, trade name or generic name

which may include agricultural products of another producer or user of such trademark, trade name or generic name.

9. To restrain, coerce or threaten an ultimate consumer to prevent him from purchasing, consuming or using such agricultural product.

10. To threaten or engage in arson, libel, slander, injury to person or property or other violent conduct when the objective is to prevent the preparing for market, transporting, handling, displaying for sale, or selling of any agricultural product.

11. To intimidate, restrain, or coerce agricultural employers in the exercise of the rights guaranteed by § 23-1384.

12. To picket or cause to be picketed, boycott or cause to be boycotted, or threaten to boycott or picket, or cause to be boycotted or picketed, any agricultural employer when the objective is to induce, encourage, force or require an agricultural employer to recognize or bargain with a labor organization as the representative of his agricultural employees, or the agricultural employees of an agricultural employer to accept or select such labor organization as their collective bargaining representative unless such labor organization is currently certified as the representative of such employees:

(a) Where the agricultural employer has lawfully recognized in accordance with this article any other labor organization and a question concerning representation may not appropriately be raised under § 23-1389.

(b) Where within the preceding twelve months a valid election under § 23-1389 has been conducted.

(c) Where a petition has been filed under § 23-1389.

13. To call a strike unless a majority of the employees within the bargaining unit has first approved the calling of such a strike by secret ballot.

C. The expressing of any views, argument, opinion or the making of any statement, including expressions intended to influence the outcome of an organizing campaign, a bargaining controversy, a strike, lockout or other labor dispute, or the dissemination of such views whether in written, printed, graphic, visual or auditory form, if such expression contains no threat of reprisal or force or promise of benefit, shall not constitute or be evidence of an unfair labor practice or constitute grounds for, or evidence justifying, setting aside the results of any election conducted under any of the provisions of this article. A statement of fact by either a labor organization or an agricultural employer relating to existing or proposed operations of the employer or to existing or proposed terms, tenure, or conditions of employment with the employer shall not be considered to constitute a threat of reprisal or force or promise of benefit. No employer shall be required to furnish or make available to a labor organization, and no labor organization shall be required to furnish or make available to an employer, materials, information, time, or facilities to enable such employer or labor

organization, as the case may be, to communicate with employees of the employer, members of the labor organization, its supporters, or adherents.

D. For the purposes of this section, to "bargain collectively" is the performance of the mutual obligation of the agricultural employer and the representative of the agricultural employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment which directly affect the work of employees, or the negotiation of an agreement, or to resolve any question arising thereunder. To "bargain collectively" includes the furnishing of necessary and relevant information in connection with the negotiation of an agreement or any issue arising under such agreement, or requiring as a condition for entering into an agreement the execution of a written contract incorporating any agreement reached if requested by either party. The failure or refusal of either party to agree to a proposal, or to the making, changing or withdrawing of a lawful proposal, or the making of a concession shall not constitute, or be evidence, direct or indirect, of a breach of this obligation. The board in any remedial order shall not direct either party to make any concession or agree to any proposal or to make any payment of money except to employees who are reinstated with back pay as provided in § 23-1390. This section shall not require any agricultural employer to bargain collectively with respect to any management rights. "Management rights", as used in this subsection, include but are not limited to the right to discontinue the entire farming operation or any part thereof, to contract out any part of the work thereof not covered

by a labor contract, to sell or lease any of the real or personal property involved therein, or to determine the methods, equipment and facilities to be used in producing agricultural products or the agricultural products to be produced.

E. Where there is in effect a collective bargaining contract covering agricultural employees, the duty to bargain collectively also means that no party to such contract shall terminate or modify such contract, unless the party desiring such termination or modification:

1. Serves a written notice upon the other party to the contract of the proposed termination or modification not less than sixty days prior to the expiration date thereof, or if such contract contains no expiration date, sixty days prior to the time it is proposed to make such termination or modification.

2. Offers to meet and confer with the other party for the purpose of negotiating a new contract or a contract containing the proposed modifications.

3. Continues the contract in full force and effect without resorting to a strike or lockout for a period of sixty days after such notice is given or until the expiration date of such contract, whichever occurs later.

F. The duties imposed upon agricultural employers, agricultural employees, and labor organizations shall become inapplicable upon an intervening certification of the board, under which the labor organization or individual which is a party to the contract has been superseded as or ceased to be the representative of the employees subject to the provisions of § 23-1389, and

the duties so imposed shall not be construed as requiring either party to discuss or agree to any modification of the terms and conditions contained in a contract for a fixed period, if such modification is to become effective before such terms and conditions can be reopened under the provisions of the contract. Any agricultural employee who engages in a strike within the sixty-day period specified in this subsection shall lose his status as an agricultural employee of the agricultural employer engaged in the particular labor dispute for the purposes of §§ 23-1385, 23-1389 and 23-1390, but such loss of status for such employee shall terminate if and when he is reemployed by such employer.

§ 23-1386. *Agricultural employment relations board; members; terms; appointment*

A. There is established an agricultural employment relations board which consists of seven members.

B. The members of the board shall be appointed by the governor. Two of the members shall be appointed as representatives of agriculture employers, two of the members appointed shall be representatives of organized agricultural labor and the three additional members, one of whom shall be the chairman of the board, shall be appointed as representatives of the general public. The term of office of the members shall be five years. Upon the initial appointment, one of the labor representatives shall be appointed for a term of one year, one of the representatives of the general public shall be appointed for a term of one year, one of the agricultural representatives shall be appointed for a term of two years, one of the representatives of the general public shall be appointed for a term of two years, one of the agricultural representatives shall be

appointed for a term of three years, one of the labor representatives shall be appointed for a term of four years and one of the public members of the board shall be appointed for a term of five years. Any individual appointed to fill a vacancy of any member shall be appointed only for the unexpired portion of the term of the member he is succeeding. Members of the board may be removed from office by the governor upon notice and hearing for neglect of duty or malfeasance in office, but for no other cause.

C. Two alternate members shall be appointed to the board by the governor. One of the alternates shall be appointed as a representative of organized agricultural labor and the other as a representative of agriculture. Alternates shall be appointed for terms of five years. Any individual appointed to fill a vacancy of any alternate shall be appointed only for the unexpired portion of the term of the alternate he is succeeding. Alternates may be removed from office by the governor upon notice and hearing for neglect of duty or malfeasance in office, but for no other cause. No alternate shall participate in deliberations of the board except in the absence of a board member representing his area of interest.

D. There shall be a general counsel of the board who shall be appointed by the governor. The general counsel shall be the exclusive legal representative of the board, shall have final authority, on behalf of the board, with respect to the investigation of charges and the issuance of complaints under § 23-1390 and with respect to the prosecution of such complaints by the board, and shall have such other duties as the board may prescribe or as may be provided by law. The gen-

eral counsel shall appoint such assistants as shall be needed to carry out the work of the office.

E. A vacancy on the board shall not impair the right of the remaining members to exercise all of the powers of the board and four members shall at all times constitute a quorum of the board. The board shall have an official seal which shall be judicially recognized.

F. The principal office of the board shall be in the city of Phoenix, but it may meet and exercise any or all of its powers at any other place.

G. The board may meet in executive session upon the decision of a majority of the members of the board.

H. Meetings of the board may be called by the chairman or by a majority of the members of the board by giving written notice to the chairman who shall notify all the members of the board as to time and place of the board meeting.

§ 23-1387. *Powers and duties*

A. The board may, by one or more of its members or by such agents or agencies as it may designate, prosecute any inquiry necessary to its functions in any part of the state. A member of the board who participates in any such inquiry shall not be disqualified from subsequently participating in a decision of the board in the same case.

B. The board shall make and may from time to time amend and rescind, in the manner prescribed by law, such rules and regulations as may be necessary to carry out the provisions of this article.

C. The board may also establish offices in such other cities as it shall deem necessary and shall determine the region to be served by such offices. The board may delegate to the heads of these offices as it deems appropriate its powers under § 23-1389, to determine the unit appropriate for the purpose of collective bargaining, to investigate and provide for hearings, to determine whether a question of representation exists and to direct an election by a secret ballot and certify the results of such election within ten days. The board may review any action taken pursuant to the authority delegated under this subsection by any regional officer upon a request for a review of such action filed with the board by any interested party. Any such review made by the board shall not, unless specifically ordered by the board, operate as a stay of any action taken by the regional officer. The entire record considered by the board in considering or acting upon any such request or review shall be made available to all parties prior to such consideration or action, and the board's findings and action thereon shall be published as a decision of the board.

§ 23-1388. *Officers and employees of the board*

A. The board shall have authority to appoint an executive secretary and such attorneys, hearing officers, trial examiners and other employees as it may from time to time find necessary for the proper performance of its duties. Compensation for all such personnel shall be as determined pursuant to § 38-611.

B. The board may not employ any attorney for the purpose of reviewing transcripts of hearings or preparing drafts of opinions, except that any attorney employed for assignment as a legal assistant to any

board member may for such board member review such transcripts and prepare such drafts.

C. No trial examiner's report shall be reviewed, either before or after its publication, by any person other than a member of the board or his legal assistant, and no trial examiner shall advise or consult with the board with respect to exceptions taken to his findings, rulings or recommendations.

D. Attorneys appointed under this section may, at the discretion of the board, appear for and represent the board in any case in court.

§ 23-1389. *Representatives and elections*

A. Representatives selected by a secret ballot for the purposes of collective bargaining by the majority of the agricultural employees in a unit appropriate for such purposes shall be the exclusive representatives of all the agricultural employees in such unit for the purpose of collective bargaining in respect to rates of pay, wages, hours of employment or other conditions of employment. If ratification of any such contract is required, the right to vote in such ratification shall be limited to the employees in the bargaining unit. Any individual agricultural employee or a group of agricultural employees may at any time present grievances to their agricultural employer and have such grievances adjusted, without the intervention of the bargaining representative, if the adjustment is not inconsistent with the terms of a collective bargaining contract or agreement then in effect. The bargaining representative shall be given opportunity to be present at such adjustment.

B. The board shall decide in each case whether in order to ensure to employees the fullest freedom in exercising their rights the unit appropriate for the purposes of collective bargaining shall consist of either all temporary agricultural employees or all permanent agricultural employees of an agricultural employer working at the farm where such employer grows or produces agricultural products or both. In making unit determinations the extent of a union's extent of organization shall not be controlling. Principal factors should be the community of interest between employees, same hours, duties and compensation, the administrative structure of the employer and control of labor relations policies.

C. The board shall investigate any petition, and if it has reasonable cause to believe that a question of representation exists shall provide for an appropriate hearing upon due notice, when such petition has been filed in good faith in accordance with such regulations as may be prescribed by the board:

1. By an agricultural employee or group of agricultural employees or any individual or labor organization acting in their behalf alleging that thirty per cent or more of the number of agricultural employees in the unit in question either wish to be represented for collective bargaining and that their employer declines to recognize their representative or assert that the individual or labor organization which has been certified or is being currently recognized by their employer as the bargaining representative is no longer a representative.

2. By an agricultural employer, alleging that one or more individuals or labor organizations have presented to him a claim to be recognized as the representative or that an individual or labor organization which has previously been certified as the bargaining representative is no longer a representative.

D. If the board finds upon the record of such hearing that a question of representation exists, it shall direct an election by secret ballot and shall certify the results thereof. If a second labor organization files a petition for an election alleging that thirty per cent or more of the employees in the unit in question desire to be represented by that labor organization, then the board shall require that the names of both labor organizations shall appear on the ballot. In any election the voters shall be afforded the choice of "no union". If in a representational election where more than one union is on the ballot, and none of the choices receives a majority vote, a second election shall be held. The second election shall be between the union receiving the highest number of votes and "no union". In any election a labor organization shall obtain a majority of all votes cast in that election in order to be certified as the bargaining representative of all the employees in that unit.

E. In determining whether or not a question of representation exists, the same regulations and rules of decision shall apply irrespective of the identity of the persons filing the petition or the kind of relief sought. In no case shall the board deny a labor organization a

place on the ballot by reason of an order with respect to such labor organization or its predecessor not issued in conformity with § 23-1390.

F. Within five days of receipt of such a petition, the agricultural employer may file a challenge to such petition on the ground that the authorization for the filing of such petition is not current or that such authorization has been obtained by fraud, misrepresentation or coercion. Such petition shall not act to stay the election proceeding but if it is thereafter determined that the authorizations are not current or obtained by fraud, misrepresentation or coercion the petition will be dismissed.

G. No election shall be directed or conducted in any bargaining unit or any subdivision thereof within which, in the preceding twelve-month period, a valid election shall have been held. Employees engaged in an economic strike who are not entitled to reinstatement shall be eligible to vote under such regulations as the board shall find are consistent with the purposes and provisions of this article in any election conducted within three months after the commencement of the strike. Any agricultural employee who is found to have sought or accepted employment only for the purpose of affecting the outcome of an election shall not be eligible to vote in an election conducted pursuant to the provisions of this article for a period of twelve months from the date of that election.

H. Nothing in this section shall be construed to prohibit the waiving of hearings by stipulation for the purpose of a consent election in conformity with regulations and rules of decision of the board.

I. The agricultural employer, within ten days after an election is directed by the board or a consent election agreement is approved by the board and on request of the board, shall furnish to the board a list of agricultural employees in the bargaining unit who are qualified to vote, and such a list shall be made available to the organizations or other interested employees involved in the election.

J. Upon the filing with the board, by thirty per cent or more of the agricultural employees in a bargaining unit covered by a certification or by an agreement between their employer and a labor organization made pursuant to § 23-1385, of a petition alleging the desire that such representation authority be rescinded, the board shall conduct an election by secret ballot of the employees in such unit and certify the results thereof to the labor organization and to the employer.

§ 23-1390. *Prevention of unfair labor practices*

A. The board may, as provided in this section, prevent any person from engaging in any unfair labor practice.

B. When it is charged that any person has engaged in or is engaging in any such unfair labor practice, the board, or any agent or agency designated by the board for such purposes, may issue and cause to be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the board or a member thereof, or before a designated agent or agency, at a place therein fixed, not less than five days after the serving of such complaint. No complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the board and the service of a copy

thereof upon the person against whom such charge is made, unless the person so aggrieved was prevented from filing such charge by reason of service in the armed forces, in which event the six-month period shall be computed from the day of his discharge. Any such complaint may be amended by the member, agent, or agency conducting the hearing or the board in its discretion at any time prior to the issuance of an order based thereon. The person so complained of shall have the right to file an answer to the original or amended complaint and to appear in person or otherwise and give testimony at the place and time fixed in the complaint. In the discretion of the board or the member, agent, or agency conducting the hearing, any other person may be allowed to intervene in the proceeding and to present testimony. Any such proceeding shall, so far as practicable, be conducted in accordance with the rules of evidence applicable in the superior courts of the state under the rules of civil procedure applicable to such courts. All proceedings shall be reported by a phonographic or magnetic tape recorder.

C. The testimony taken by the board or such member, agent, or agency shall be reduced to writing and filed with the board. Thereafter, in its discretion, the board upon notice may take further testimony or hear argument. If upon the preponderance of the testimony taken the board determines that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, the board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take

such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this article. Where an order directs reinstatement of an employee, back pay may be required of the employer or labor organization, as the case may be, responsible for the discrimination suffered by him. Such order may further require such person to make reports from time to time showing the extent to which he has complied with the order. If upon the preponderance of the testimony taken the board determines that the person named in the complaint has not engaged in or is not engaging in any such unfair labor practice, then the board shall state its findings of fact and shall issue an order dismissing the complaint. No order of the board shall require the reinstatement of any individual as an employee who has been suspended or discharged, or the payment to him of any back pay, if such individual was suspended or discharged for cause. If the evidence is presented before a member of the board, or before an examiner or examiners thereof, such member, or such examiner or examiners, as the case may be, shall issue and cause to be served on the parties to the proceedings a proposed report, together with a recommended order, which shall be filed with the board, and if no exceptions are filed within twenty days after service thereof upon such parties, or within such further period as the board may authorize, such recommended order shall become the order of the board and become effective as therein prescribed.

D. Until the record in a case is filed in a court, as provided in this section, the board may at any time upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any findings or order made or issued by it.

E. The board may petition any superior court in any county wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order. Upon the filing of such petition the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and may grant such temporary relief or restraining order as it deems just and proper, and may make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the board. An objection that has not been urged before the board, or a member, agent or agency thereof, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the board, or a member, agent, or agency thereof, the court may order such additional evidence to be taken before the

board, its member, agent, or agency, and to be made a part of the record. The board may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which findings with respect to questions of fact is supported by substantial evidence on the record considered as a whole shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order. Upon the filing of the record with it the jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the judgment and decree shall be subject to review as provided by law.

F. Any person aggrieved by a final order of the board granting or denying in whole or in part the relief sought may obtain a review of such order in any superior court in the county wherein the unfair labor practice in question was alleged to have been engaged in by filing in such court a written petition praying that the order of the board be modified or set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the board, and thereupon the aggrieved party shall file in the court the record in the proceeding, certified by the board. Upon the filing of such petition the court shall proceed in the same manner as in the case of an application by the board under subsection E of this section, and shall have the same jurisdiction to grant to the board such temporary relief or restraining order as its deems just and proper, and in like manner to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the board. The

findings of the board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall in like manner be conclusive.

G. When an order of the board made pursuant to this section is based in whole or in part upon facts certified following an investigation pursuant to § 23-1389, and there is a petition for the enforcement or review of such order, such certification and the record of such investigation shall be included in the transcript of the entire record required to be filed under subsection E or F of this section, and thereupon the decree of the court enforcing, modifying, or setting aside in whole or in part the order of the board shall be made and entered upon the pleadings, testimony, and proceedings set forth in such transcript. The court shall not enforce any order of the board which rests, in whole or in part, upon evidence adduced from witnesses who have not testified under oath and who have not been subject to cross-examination by opposing parties.

H. The commencement of proceedings under subsection E or F of this section shall not, unless specifically ordered by the court, operate as a stay of the board's order.

I. Petitions filed under this article shall be heard expeditiously, and if possible within ten days after they have been docketed.

J. The board may, upon issuance of a complaint as provided in subsection B charging that any person has engaged in or is engaging in an unfair labor practice, petition the superior court in any county wherein the unfair labor practice in question is alleged to have occurred or wherein such person resides or transacts

business, for appropriate temporary relief or restraining order. Upon the filing of any such petition the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction to grant to the board such temporary relief or restraining order as it deems just and proper.

K. When it is charged that any person has engaged in an unfair labor practice, the preliminary investigation of such charge shall be made forthwith and given priority over all other cases except cases of like character in the office where it is filed or to which it is referred. If, after such investigation, the officer to whom the matter may be referred has reasonable cause to believe such charge is true and that a complaint should issue, he shall, on behalf of the board, petition the superior court in the county wherein the unfair labor practice in question has occurred, is alleged to have occurred, or wherein the person alleged to have committed the unfair labor practice resides or transacts business, for appropriate injunctive relief pending the final adjudication of the board with respect to such matter. Upon the filing of any such petition the superior court shall have jurisdiction to grant such injunctive relief or temporary restraining order as it deems just and proper, notwithstanding any other provision of law, provided that no temporary restraining order shall be issued without notice unless a petition alleges that substantial and irreparable injury to the charging party will be unavoidable and such temporary restraining order shall be effective for no longer than five days and will become void at the expiration of such period. Upon the filing of any such petition the courts shall cause notice thereof to be

served upon any person complained against in the charge and such person, including the charging party, shall be given an opportunity to appear in person or by counsel and present any relevant testimony. For the purposes of this subsection, superior court shall be deemed to have jurisdiction of a labor organization either in the county in which such organization maintains its principal office, or in any county in which its duly authorized officers or agents are engaged in promoting or protecting the interests of employee members. The service of legal process upon such officer or agent shall constitute service upon the labor organization and make such organization a party to the suit.

§ 23-1391. *Investigatory powers*

A. The board, or its duly authorized agent or agencies, shall at all reasonable times have access to, for the purpose of examination, and the right to copy, any evidence of any person being investigated or proceeded against that relates to any matter under investigation or in question. The board, or any member thereof, shall upon application of any party to such proceedings forthwith issue to such party subpoenas requiring the attendance and testimony of witnesses or the production of any evidence in such proceeding or investigation requested in such application. Within five days after the service of a subpoena on any person requiring the production of any evidence in his possession or under his control, such person may petition the board to revoke, and the board shall revoke, such subpoena if in its opinion the evidence whose production is required does not relate to any matter under investigation, or any matter in question in such proceedings,

or if in its opinion such subpoena does not describe with sufficient particularity the evidence whose production is required. Any member of the board, or any agent or agency designated by the board for such purposes, may administer oaths and affirmations, examine witnesses, and receive evidence. Such attendance of witnesses and the production of such evidence may be required from any place in the state of Arizona, at any designated place of hearing.

B. In case of contumacy or refusal to obey a subpoena issued to any person, the superior court of the county within the jurisdiction of which the person guilty of contumacy or refusal to obey is found or resides or transacts business shall, upon application by the board, have jurisdiction to issue to such person an order requiring such person to appear before the board, or a member, agent or agency thereof, to produce evidence if so ordered, or to give testimony touching the matter under investigation or in question. Failure to obey such order of the court may be punished by the court as contempt.

C. No person shall be excused from attending and testifying or from producing books, records, correspondence, documents or other evidence in obedience to the subpoena of the board, on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture. No individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, except that such individual so testifying shall not be

exempt from prosecution and punishment for perjury committed in so testifying.

D. Complaints, orders and other process and papers of the board, or a member, agent, or agency thereof, may be served either personally, by registered or certified mail, by telegraph or by leaving a copy thereof at the principal office, place of business or residence of the person required to be served. The verified return by the individual personally serving or leaving the copy, setting forth the manner of such service, and the return post office receipt or telegraph receipt therefor, when registered or certified, and mailed or telegraphed as provided in this subsection, shall be proof of service. Witnesses summoned before the board, its members, agent, or agency, shall be paid the same fees and mileage that are paid witnesses in the superior courts and witnesses whose depositions are taken and the persons taking the depositions shall severally be entitled to the same fees as are paid for like services in the superior courts.

E. The departments and agencies of the state, when directed by the governor, shall furnish the board, upon its request, all unprivileged records, papers and information in their possession relating to any matter before the board.

§ 23-1392. *Penalties*

Any person who wilfully resists, prevents, impedes or interferes with any member of the board or any of its agents or agencies in the performance of duties pursuant to this article, or who violates any provision of this article is guilty of a misdemeanor punishable by a fine of not more than five thousand dollars, by imprisonment for not more than one year, or both.

Provided, however, that none of the provisions of this section shall apply to any activities carried on outside the state of Arizona.

§ 23-1393. *Court jurisdiction*

A. Any person who is aggrieved or is injured in his business or property by reason of any violation of this article, or violation of an injunction issued as provided in this section, may sue in any superior court having jurisdiction of the parties for recovery of any damages resulting from such unlawful action, regardless of where such unlawful action occurred and regardless of where such damage occurred, including costs of the suit and reasonable attorney fees. Upon the filing of such suit the court shall also have jurisdiction to grant such injunctive relief or temporary restraining order as it deems just and proper. Petitions for injunctive relief or temporary restraining orders shall be heard expeditiously. Petitions for temporary restraining orders alleging a violation of § 23-1385 shall be heard forthwith and if the petition alleges that substantial and irreparable injury to the petitioner is unavoidable such temporary restraining orders may be issued pursuant to Rule 65 of the Arizona Rules of Civil Procedure.

B. In the case of a strike or boycott, or threat of a strike or boycott, against an agricultural employer, the court may grant, and upon proper application shall grant as provided in this section, a ten-day restraining order enjoining such a strike or boycott, provided that if an agricultural employer invokes the court's jurisdiction to issue the ten-day restraining order to enjoin a strike as provided by this subsection, said employer must as a condition thereto agree to submit the dispute to binding arbitration as the means of settling the

unresolved issues. In the event the parties cannot agree on an arbitrator within two days after the court awards a restraining order, the court shall appoint one to decide the unresolved issues. Any agricultural employer shall be entitled to injunctive relief accorded by Rule 65 of the Arizona Rules of Civil Procedure upon the filing of a verified petition showing that his agricultural employees are unlawfully on strike or are unlawfully conducting a boycott, or are unlawfully threatening to strike or boycott, and that the resulting cessation of work or conduct of a boycott will result in the prevention of production or the loss, spoilage, deterioration, or reduction in grade, quality or marketability of an agricultural commodity or commodities for human consumption in commercial quantities. For the purpose of this subsection, an agricultural commodity or commodities for human consumption with a market value of five thousand dollars or more shall constitute commercial quantities.

C. For the purpose of this article, superior courts shall have jurisdiction of a labor organization in this state if such organization maintains its principal office in this state, or if its duly authorized officers or agents are engaged in promoting or protecting the interests of agricultural employee members or in the solicitation of such prospective members in this state.

D. The service of summons, subpoena, or other legal process of any superior court upon an officer or agent of a labor organization, in his capacity as such, shall constitute service upon the labor organization.

E. Any labor organization which represents employees as defined in this article, and any agricultural employer, shall be bound by the acts of its agents. Any such labor organization may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of this state.

F. For the purposes of this article, in determining whether any person is acting as an agent of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling. Nothing in this section shall be deemed to preclude an agent being sued both in his capacity as an agent and as an individual.

§ 23-1394. *Scope of article*

The provisions of this article shall apply only to such persons, labor organizations or activities as are not within the jurisdiction of the National Labor Relations Act[3] or the jurisdictional guidelines established by the national labor relations board.

§ 23-1395. *Limitations*

A. Nothing in this article, except as otherwise specifically provided, shall be so construed as to interfere with or impede or diminish in any way the right to strike, or to affect the limitations or qualifications on that right.

B. Nothing in this article shall prohibit any individual employed as a supervisor from becoming or

[3] 29 U.S.C.A. § 151 et seq.

remaining a member of a labor organization, but no employer subject to this article shall be compelled to deem such supervisors as agricultural employees for the purpose of any law, either national or local, relating to collective bargaining.

Arizona Agricultural Employment Relations Board Regulations

R4-2-19. Elections: Hearings

Upon the filing of a petition for election, the Board shall direct a hearing be held in accordance with Section 23-1389(C), (D) and (E) of the Act, and, if it finds after such hearing that a question concerning representation does exist, shall order an election be held. Appeal of a determination that a question concerning representation exists shall not act to stay the election. In the event issues raised at the hearing, excepting any question concerning representation, cannot be resolved prior to the election, certification of the results of said election shall be withheld pending a determination of such unresolved issues by the Board.

R4-2-22 Conduct of Hearing

A. Hearings shall be conducted by a hearing officer and shall be open to the public. At any time a hearing officer may be substituted for the hearing officer previously presiding: Provided absent agreement by the parties, the hearing shall be held de novo. It shall be the duty of the hearing officer to inquire fully into all matters in issue and necessary to obtain a full and complete record upon which the hearing officer on

behalf of the Board may discharge his duties under Section 1389(D) of the Act. A copy of the decision shall be served on all parties.

B. The hearing officer may, in his discretion, continue the hearing from day to day or adjourn it to a later date or a different place, by announcement thereof at the hearing or by other appropriate notice.

C. The hearing officer may proceed, either on the record or in writing, to determine whether a question concerning representation exists and direct an election when appropriate, determine the unit appropriate, and determine such other issues as are raised at the hearing, stating his findings and conclusions. The hearing officer may allow oral argument, briefs to be submitted, or both. Where briefs are to be submitted, any party desiring to do so shall file the original and one copy thereof within seven (7) days after the close of the hearing provided however, that prior to the close of the hearing and for good cause shown, the hearing officer may grant an extension of time not to exceed an additional seven (7) days. Copies thereof shall be served simultaneously on all other parties to the proceeding. No reply briefs may be filed except upon special leave of the hearing officer.

D. All motions including the motions for intervention shall be in writing, or if made at the hearing, be stated orally on the record and shall briefly state the order or relief sought and the grounds for such motion. An original and two (2) copies of written motions shall be filed and a copy thereof immediately shall be served on the other parties to the proceeding. Motions made prior to the transfer of the case to the Board shall be filed with the hearing officer. After the transfer of the case to the Board all motions shall be filed with the Board. The hearing officer may rule upon all motions or he may refer the motion to the Board. If the hearing officer, prior to the close of the hearing, grants a motion to dismiss the petition, the petitioner may obtain a review of such ruling with the Board. The hearing officer shall rule, either orally on the record or in writing, upon all motions filed with him or made at the hearing.

E. Any person desiring to intervene in any proceeding shall make a motion for intervention, stating the grounds upon which said person claims to have an interest in the proceeding. The Board or the hearing officer, as the case may be, may be order permit intervention in person or by counsel or by other representative to such extent and upon such terms as he may deem proper, and such intervenor shall thereupon become a party to the proceedings.

F. All motions, rulings and orders shall become part of the record. Unless expressly authorized by the Rules and Regulations, the rulings by the Board or by the hearing officer shall not be appealed directly to any court of this state but shall be considered or reconsidered by the Board on appropriate appeal.

G. A party to a proceeding may, because of extraordinary circumstances, move after the close of a hearing for a reopening of the record, or move after the decision for reconsideration or rehearing, except that no motion for reconsideration or a rehearing will be entertained pursuant to this subsection by the Board with respect to any matter which could have been but was not raised at the original hearing. A motion for reconsideration shall state with particularity the material

error claimed and with respect to any finding of material fact shall specify the page of the record relied upon. A motion for rehearing shall specify the error alleged to require a hearing de novo and the prejudice to the movent alleged to result from such error. A sought to be adduced, why it was not presented previously, and what evidence, evidence which has become available only since the close of the hearing, or evidence which the Board believes sould have been taken at the hearing will be taken at any further hearing. All motions pusuant to this subsection shall be filed within five (5) days, or such further period as the Board may allow, after service of the decision. The filing and pendency of a motion under this provision shall not, unless so ordered, operate to stay the effectiveness of any action taken or directed to be taken, except that if the motion states with particularity that the granting thereof will effect the eligibility to vote of specific voters the ballots of such employees shall be challenged and impounded in any election conducted while such motion is pending.

H. Appeal of any determination by the hearing officer shall be made to the Board within ten (10) days after receipt of the hearing officer's determination, or such additional time as the Board may grant. Appeals shall be in writing with an original and six (6) copies filed with the Board, and a copy served simultaneously on all other parties. Any party may, within seven (7) days of such appeal, file with the Board an original and six (6) copies of a statement in opposition to such appeal, together with a statement of service of opposition on the other parties. The Board may deny the appeal without awaiting a statement in opposition

thereto. An appeal shall not serve to stay the election. Upon appeal the Board shall forthwith either upon the record or after further hearings, as it may decide, determine the issues submitted to it and affirm or reverse the determination of the hearing officer in whole or in part, or make such other disposition of the matter as it deems appropriate.

I. In any case in which the hearing officer believes the proceeding raises questions which should be decided by the Board, he may issue an order, on the record or in writing, transferring the case to the Board for decision.

J. The parties may, at any time, waive their rights to appeal to the Board. Failure to appeal shall preclude such parties from relitigating in any related proceeding, including unfair labor practice proceedings, any issue which was or could have been raised in the representation proceeding. Denial of an appeal by the Board shall constitute an affirmance of the hearing officer's decision, and shall also preclude relitigation of any such issues in any related unfair labor practice proceeding.

K. Any appeal or statement in opposition must be a self-contained document enabling the Board to rule on the basis of its contents. Such document shall not raise any issue or allege any facts which could have been but were not timely presented to the hearing officer.